INCOME TAX ACT, 2058

NEPAL

THE COMMONWEALTH OF SYMMETRICA

INCOME TAX ACT 20**

IMF document: 2000

Piloted in:
Nepal in 2002 and never revised
Tanzania in 2002 and substantially revised in 2008 and onwards

International Monetary Fund

THE COMMONWEALTH OF SYMMETRICA

INCOME TAX ACT 20**

Reference for Income Tax Act, 2058

IMF document: 2000

Piloted in:

Nepal in 2002 and never revised

Tanzania in 2002 and substantially revised in 2008 and onwards

Further use: not yet, not-known

COMPARISON WITH INCOME TAX ACT, 2058

(Sec. in left is Nepal Tax Section and right is corresponding to Symmentrica with section headings)

Exact Sections

Mixed in various Sections

Not in Nepal tax law

New in Income Tax Act, 2058

Sec.11 Concessions
Sec.12 Donation
Sec.17 Pollution Control Expenses
Sec.59 Banking Business
Sec.70 Cross-border transport and data transmission
Sec74. Rights of Tax payers
Sec.85 Place of tax payment
Chapter 24 Miscellaneous (Sec 132 to 142)

Symmetrica TABLE OF CONTENT

THE COMMONWEALTH OF SYMMETRICA
INCOME TAX ACT 20**

PART I: IMPOSITION OF INCOME TAX

Division I: Income Tax Payable

Sec. 1. Income Tax Payable

(1) Subject to this Act, income tax is payable for each tax year in accordance with the procedure in Part V by every person-

(a) who has taxable income for the year;

(b) who is a foreigner's Symmetrican branch and has repatriated income for the year;

(c) who receives a final withholding payment during the year; or

(d) who ceases to be an approved retirement fund during the year.

(2) The amount of income tax payable by a person for a tax year under subsection (1) is equal to the sum of the income tax payable under subsection (1)(a) to (d).

(3) Subject to subsection (4), the income tax payable by a person under subsection (1)(a) is calculated by-

(a) applying the relevant rates of income tax determined under section 5 or 6 to the person's taxable income for the tax year, and

(b) subtracting from the resulting amount any offsets that the person may claim for the year.

(4) The income tax payable under subsection (1)(a) by a resident individual who is not required to file a return of income for the tax year by reason of section 236(b) is equal to the sum of the amounts to be withheld under section 210 by the individual's employer or employers, as the case requires, from payments made to the individual during the year.

(5) The income tax payable by a foreigner's Symmetrican branch under subsection (1)(b) is calculated by applying the rate of income tax mentioned in section 6(3) to the branch's repatriated income for the tax year.

(6) The income tax payable by a person under subsection (1)(c) is the sum of the amounts calculated by applying the relevant rates of income tax determined under section 7 to the amount of each final withholding payment received by the person during the tax year.

(7) The income tax payable by a person under subsection (1)(d) is calculated in accordance with section 192(4).

Division II: Rates of Income Tax

Sec. 5. Rates of Income Tax for Individuals

(1) Subject to subsections (2), (4), and (5), the taxable income of a resident individual for a tax year is taxed at the following rates:

(a) taxable income not exceeding SY 10,000 - 20 percent of the taxable income;

(b) taxable income in excess of SY 10,000 but not exceeding SY 40,000 – SY 2,000 plus 30 percent of taxable income in excess of SY 10,000; and

(c) taxable income in excess of SY 40,000 - SY 11,000 plus 35 percent of taxable income in excess of SY 40,000.

(2) Subject to subsections (3) and (4), an individual may claim that the income tax rate applicable to any part of an individual's taxable income under subsection (1) shall not exceed the highest rate that would apply if the individual's taxable income for the tax year and the previous four tax years were averaged over those years.

(3) For the purposes of a calculation under subsection (2), any tax year during which the individual-

(a) is a non-resident at any time during the year; or

(b) engages in full-time education for

more than six months during the year, is excluded and the individual's taxable income is averaged over the lesser number of tax years within the four year limit that are not excluded.

(4) The taxable investment income of a resident minor for a tax year is taxed at the rate of 35 percent.

(5) If a resident minor has taxable income for a tax year other than taxable investment income, that other income is taxed at the rates specified in subsection (1), having regard to subsection (2), but without regard to the taxable investment income of the minor for the year or any previous tax year.

(6) The taxable income of a non-resident individual for a tax year is taxed at the rate of 20 percent.

(7) Where section 109(3) or (4) treats an individual as resident during one part of a tax year and not resident during the remaining part-

(a) the individual's taxable income up to the amount of the individual's assessable income referred to in section 15(1)(b) is taxed at the rate mentioned in subsection (6); and

(b) the remainder of the individual's taxable income is taxed at the rates determined under subsection (1) as amended to reduce the thresholds referred to in proportion to the part of the year for which the individual is resident.

Sec. 6. Rates of Income Tax for Entities

(1) The taxable income of a trust for a tax year is taxed at the rate of 35 percent.

(2) The taxable income of a company, foreigner's Symmetrican branch, or an unapproved retirement fund for a tax year is taxed at the rate of 30 percent.

(3) The repatriated income of a foreigner's Symmetrican branch for a tax year is taxed at the rate of 10 percent.

Sec. 7. Rates of Withholding Tax

(1) Subject to subsection (2), income tax to be withheld from payments under Division II of Part V shall be withheld at the following rates:

(a) payments to which section 210 applies-

(i) in the case of a resident withholdee - at the rates prescribed in regulations; or

(ii) in the case of a non-resident withholdee - 20 percent;

(b) payments to which section 211 applies-

(i) in the case of dividends, gains from investment insurance, and gains from an interest in an unapproved retirement fund - 10 percent; or

(ii) in the case of other payments - 20 percent; and

(c) payments to which section 212 applies-

(i) in the case of payments to which section 212(1) applies - 20 percent; and

(ii) in the case of payments to which section 212(2) applies - at the rate prescribed by the Commissioner in the notice.

(2) Income tax to be withheld under Division II of Part V from an investment final withholding payment shall be withheld at the rate of 10 percent to the extent to which the person incurring the payment is denied a deduction for the payment under section 27.

PART II: INCOME TAX BASE

Division I: Calculating the Income Tax Base

Subdivision A: Taxable Income

Sec. 10. Taxable Income

(1) The taxable income of a person for a tax year is the total of the person's assessable income for the year from each employment, business, and investment less any reduction allowed for the year under section 191(2) (retirement contributions to approved retirement funds).

(2) The taxable income of each person is determined separately.

Subdivision B: Assessable Income

Sec. 15. Assessable Income

(1) Subject to this Act, the assessable income of a person for a tax year from any employment, business, or investment is-

(a) in the case of a resident person, the person's income from the employment, business, or investment for the year; and

(b) in the case of a non-resident person, the person's income from the employment, business, or investment for the year, but only to the extent that the income has a source in Symmetrica.

(2) Where section 109(3) or (4) treats an individual as resident during one part of a tax year and not resident during the remaining part, the individual's assessable income for the tax year from any employment, business, or investment is calculated as the sum of-

(a) with respect to the part during which the individual is resident, the amount calculated under subsection (1)(a) as though the part were a tax year; and

(b) with respect to the part during which the individual is not resident, the amount calculated under subsection (1)(b) as though the part were a tax year.

Sec. 16. Income from an Employment

(1) An individual's income from an employment for a tax year is the individual's remuneration from the employment of the individual for the year.

(2) Subject to subsection (3), there shall be included in calculating an individual's remuneration from an employment of the individual for a tax year the following payments made to the individual by the employer during the year:

(a) payments of salary, wages, leave pay, overtime pay, fees, commissions, gratuities, and bonuses;

(b) payments of any personal allowance, including any cost of living, subsistence, rent, entertainment, or travel allowance;

(c) payments providing any discharge or reimbursement of costs incurred by the individual or an associate of the individual;

(d) payments for the individual's agreement to any conditions of the employment;

(e) payments for redundancy or loss or termination of the employment;

(f) retirement contributions and retirement payments;

(g) other payments made in respect of the employment; and

(h) other amounts required to be included under Division II of this Part, Part III, Part IV, or section 223.

(3) The following are excluded in calculating an individual's remuneration from an employment:

(a) exempt amounts and final withholding payments;

(b) meals or refreshments provided in premises operated by or on behalf of an employer to the employer's employees that are available to all the employees on similar terms;

(c) any discharge or reimbursement of costs incurred by the individual-

(i) that serve the proper

business purposes of the employer; or

(ii) that are or would otherwise be deductible in calculating the individual's income from any business or investment;

(d) payments providing any passage of the individual to or from Symmetrica in respect of the individual's first employment by the employer or termination of the employment; and

(e) payments that, by reason of their size, type, and frequency with which the employer makes similar payments to employees, are unreasonable or administratively impracticable for the employer to account for or to allocate to the individual.

Sec. 17. Income from a Business

(1) A person's income from a business for a tax year is the person's gains and profits from conducting the business for the year.

(2) Subject to subsection (3), there shall be included in calculating a person's gains and profits from conducting a business for a tax year the following amounts derived by the person from conducting the business during the year:

(a) service fees;

(b) incomings for trading stock;

(c) gains from the realisation of business assets or liabilities of the business as calculated under Division III;

(d) amounts required to be included under section 87 on the realisation of the person's depreciable assets of the business;

(e) amounts derived as consideration for accepting a restriction on the capacity to conduct the business;

(f) gifts and other ex gratia payments received by the person in respect of the business from a person who is not an associate of the person;

(g) amounts derived that are effectively connected with the business and that would otherwise be included in calculating the person's income from an investment; and

(h) other amounts required to be included under Division II of this Part, Part III, Part IV, or section 223.

(3) The following are excluded in calculating a person's gains and profits from conducting a business:

(a) exempt amounts and final withholding payments; and

(b) amounts that are included in calculating the person's income from any employment.

Sec. 18. Income from an Investment

(1) A person's income from an investment for a tax year is the person's gains and profits from conducting the investment for the year.

(2) Subject to subsection (3), there shall be included in calculating a person's gains and profits from conducting an investment for a tax year the following amounts derived by the person from conducting the investment during the year:

(a) any dividend, gain from investment insurance, gain from an interest in an unapproved retirement fund, interest, natural resource payment, rent, retirement payment made by an approved retirement fund, and royalty derived in respect of the investment;

(b) gains from the realisation of investment assets or liabilities of the investment as calculated under Division III;

(c) amounts required to be included under section 87 on the realisation of the person's depreciable assets of the investment;

(d) amounts derived as consideration for accepting a restriction on the capacity to conduct the investment;

(e) gifts and other *ex gratia* payments received by the person in respect of the investment from a

person who is not an associate of the person; and

(f) other amounts required to be included under Division II of this Part, Part III, Part IV, or section 223.

(3) The following are excluded in calculating a person's gains and profits from conducting an investment:

(a) exempt amounts and final withholding payments; and

(b) amounts that are included in calculating the person's income from any employment or business.

Subdivision C: Exempt Amounts

Sec. 20. Exempt Amounts

(1) The following amounts are exempt from income tax:

(a) amounts derived by any person entitled to privileges under the Diplomatic Privileges Act to the extent provided in that Act or in regulations made under that Act;

(b) amounts derived by an individual from employment in the public service of the government of a foreign country provided-

(i) the individual is a resident person solely by reason of performing the employment or is a non-resident person; and

(ii) the amounts are payable from the public funds of the country;

(c) foreign source amounts derived by-

(i) an individual who is not a citizen of Symmetrica and who is referred to in paragraph (b); or

(ii) a member of the immediate family of an individual referred to in subparagraph (i);

(d) a scholarship payable in respect of tuition or fees for full-time instruction at an educational institution;

(e) amounts derived by way of alimony, maintenance, or child support under a judicial order or written agreement;

(f) amounts derived by way of gift, bequest, or inheritance, except as required to be included in calculating income under sections 16, 17, and 18;

(g) amounts derived in respect of

(i) an asset that is not a business asset, depreciable asset, investment asset, or trading stock; or

(ii) a liability that is not a liability of a business or investment; and

(h) amounts derived by an exempt organisation, except to the extent derived in conducting a business that is not related to the functions referred to in subsection (2)(a).

(2) For the purposes of this section, “exempt organisation” means an entity that satisfies the following conditions:

(a) the entity is and functions as-

(i) a religious or charitable organisation of a public character;

(ii) an amateur sporting association formed for the purposes of promoting social or sporting amenities not involving the acquisition of gain by the association or by its members; or

(iii) a trade union;

(b) the entity has been issued with a ruling by the Commissioner under section 313 currently in force stating that it is an exempt organisation; and

(c) the assets of and amounts derived by the entity do not and may not provide a benefit to any person, except for-

(i) a reasonable benefit to a person in pursuit of the entity's functions referred to in paragraph (a); or

(ii) a reasonable payment to a person for assets or services rendered to the entity by the person.

Subdivision D: Deductions

Sec. 25. General Principles of Deductions

(1) Notwithstanding anything in this Act to the contrary, for the purposes of calculating a person's income for a tax year from any business, employment, or investment, no deduction is allowed-

(a) for consumption costs or excluded costs incurred by the person; or

(b) to the extent to which a deduction is not denied by paragraph (a), except as provided for by this Act.

(2) Subject to-

(a) subsection (3);

(b) the remainder of this Subdivision; and

(c) Division II of this Part , Part III, and Part IV, for the purposes of calculating a person's income for a tax year from any business or investment, there shall be deducted all costs to the extent incurred-

(d) during the year;

(e) by the person; and

(f) in the production of income from the business or investment.

(3) Subject to-

(a) the remainder of this Subdivision; and

(b) Division II of this Part, Part III, and Part IV, no deduction is allowed for-

(c) costs of a capital nature;

(d) costs incurred on the realisation of a liability; or

(e) foreign income tax.

(4) For the purposes of this section-

"consumption costs" means-

(a) costs of an individual to the extent to which they are incurred, including interest incurred with respect to money borrowed to the extent to which it is used-

(i) in maintaining the individual, including in providing shelter as well as meals, refreshment, entertainment, or other leisure activities;

(ii) with respect to the individual commuting, other than commuting in the course of conducting a business or investment that does not involve commuting between the individual's home and a place at which the business or investment is conducted;

(iii) in acquiring clothing for the individual, other than clothing that is not suitable for wearing outside of work; and

(iv) in educating the individual, other than education that is directly relevant to a business or investment conducted by the individual and that does not lead to a degree or diploma; and

(b) where a person makes a payment to an individual, costs incurred in making the payment, including costs incurred in favour of a third person, unless and to the extent that-

(i) the payment is included in calculating the income of the individual;

(ii) the individual makes a return payment of an equal market value to the person as consideration for the first-mentioned payment; or

(iii) the amount of the costs is so small as to make it unreasonable to require or administratively impracticable for the

person to account for them;

"costs of a capital nature"-

(a) means-

(i) costs incurred in respect of natural resource prospecting, exploration, and development; and

(ii) costs incurred in the acquisition of an asset with a useful life exceeding 12 months; and

(b) excludes consumption costs and excluded costs;

“excluded costs” means-

(a) tax payable under this Act;

(b) bribes;

(c) fines and similar penalties payable to a government or a political subdivision of a government of any country for breach of any law or subsidiary legislation; and

(d) costs to the extent to which they are incurred by a person in deriving exempt amounts (other than amounts exempt by reason of section 142 only) or final withholding payments of the type referred to in section 222(1)(c).

Sec. 26. Interest

For the purposes of section 25(2), interest incurred by a person during a tax year under a debt obligation of the person is incurred by the person in the production of income from a business or investment to the extent that-

(a) where the debt obligation was incurred in borrowing money, the money is used during the year or was used to acquire an asset that is used during the year; or

(b) in any other case, the debt obligation was incurred, in the production of income from the business or investment.

Sec. 27. Investment Final Withholding Payments

(1) For the purposes of calculating a person's income for a tax year from any business or investment, a deduction is not allowed for an investment final withholding payment incurred by the person during the year to the extent to which-

(a) it and other investment final withholding payments incurred previously during the year for which a deduction is available; exceed

(b) the amount calculated using the following formula:

A x B x C/365

where-

A is the gross domestic value of the business or investment-

(i) subject to subparagraph (ii), at the start of the year or, where the person begins to conduct the business or investment during the year, the time at which the person so begins; or

(ii) where the Commissioner serves the person with a notice in writing under this provision, on average over the year;

B is the statutory rate; and

C is the number of days during the year on which the person conducts the business or investment.

(2) For the purposes of this section, the "gross domestic value" of a person's business or investment means the total book value of domestic assets (gross of liabilities) of the business or investment calculated in accordance with generally accepted accounting principles.

Sec. 28. Trading Stock

(1) For the purposes of calculating a person's income for a tax year from any business-

(a) there shall be deducted in respect of the realisation by the person of trading stock of the business during the year the allowance determined under subsection (2); and

(b) no deduction is otherwise allowed for costs incurred that are outgoings for trading stock.

(2) The allowance referred to in subsection (1) is calculated as-

(a) the opening value of trading stock of the business for the year; plus

(b) outgoings for trading stock of the business acquired or owned by the person during the year (ignoring section 80(3)); less

(c) the closing value of trading stock of the business for the year.

(3) The opening value of trading stock of a business for a tax year is the closing value of trading stock of the business at the end of the previous tax year.

(4) The closing value of trading stock of a business for a tax year is the lower of-

(a) outgoings for the trading stock of the business at the end of the year;

(b) the market value of the trading stock of the business at the end of the year; or

(c) the total of the amounts referred to in subsection (2)(a) and (b).

Sec. 29. Repair and Improvement Costs

(1) Subject to the limitation in subsection (2), for the purposes of calculating a person's income for a tax year from any business or investment, there shall be deducted all costs to the extent incurred-

(a) during the year;

(b) by the person; and

(c) in respect of the repair or improvement of depreciable assets owned and used by the person during the year in the production of income from the business or investment.

(2) Deductions allowed under subsection (1) with respect to all depreciable assets in a particular pool of depreciable assets of the person shall not exceed 5 percent of the written down value of the pool at the end of the tax year and deductions shall be allowed with respect to costs in the order in which they are incurred.

(3) Any excess cost, or part thereof, for which a deduction is not allowed under subsection (1) as a result of the limitation in subsection (2) shall be added to the depreciation basis of the pool to which it relates in accordance with section 86(5).

Sec. 30. Research and Development Costs

(1) For the purposes of calculating a person's income for a tax year from any business, there shall be deducted research and development costs to the extent incurred by the person during the year in conducting the business.

(2) For the purposes of this section, "research and development costs"-

(a) means costs incurred by a person for the purposes of developing the person's business and improving business products or process; and

(b) excludes any costs incurred that are otherwise included as an outgoing for any asset, including an asset referred to in section 85(3) (relating to natural resource prospecting, exploration, and developing).

Sec. 31. Depreciation Allowances

For the purposes of calculating a person's income for a tax year from any business or investment, there shall be deducted in respect of depreciation of depreciable assets owned and used by the person during the year in the production of the person's income from the business or investment the allowances granted to the person for the year under Subdivision B of Division III.

Sec. 32. Losses on Realisation of Business and Investment Assets and Liabilities

(1) For the purposes of calculating a person's income for a tax year from any business, there shall be deducted any loss of the person, as calculated under Division III,

from the realisation during the year of-

(a) a business asset of the business to the extent to which the asset was used in the production of income from the business; or

(b) a liability of the business to the extent to which-

(i) where the liability is a debt obligation incurred in borrowing money, the money was used or an asset purchased with the money was used; or

(ii) in any other case, the liability was incurred, in the production of income from the business.

(2) Subsection (1) applies in calculating a person's income for a tax year from any investment as though a reference to-

(a) a business were a reference to an investment; and

(b) a business asset or liability of a business were a reference to an investment asset or liability of an investment.

Sec. 33. Losses from a Business or Investment

(1) Subject to subsections (2), (3), and (6), for the purposes of calculating the income of a person (other than a partnership or a foreign branch that is not a foreigner's Symmetrican branch) for a tax year from a business or investment, there shall be deducted-

(a) any unrelieved loss of the year of the person from any other business or investment;

(b) any unrelieved loss of a previous tax year of the person from any business or investment; and

(c) any unrelieved loss of the year or a previous tax year of an associate of the person from any business or investment that is transferred to the person for the year.

(2) For the purposes of subsection (1), a person may only deduct an unrelieved loss of the person or an associate-

(a) in the case of a foreign source loss of the person or the associate from an investment, in calculating the person's income from an investment sourced in the same foreign country as the loss;

(b) in the case of other losses of the person or the associate from an investment, in calculating the person's income from an investment; and

(c) in the case of other foreign source losses of the person or the associate, in calculating the person's income sourced in the same foreign country as the loss.

(3) An associate of a person may only transfer an unrelieved loss to the person under subsection (1)(c) where the following requirements are met:

(a) either the person or the associate is an entity and the associate is not a partnership;

(b) at all times during the tax year of the loss, at the time of transfer, and at all times in between-

(i) the person and the associate are residents;

(ii) where the person or the associate is an individual, the individual owns at least 50 percent of the underlying ownership of the entity; and

(iii) where both the person and the associate are entities, there is at least 50 percent common underlying ownership of the entities;

(c) the amount of loss transferred does not exceed the person's income from the business or investment for the tax year calculated-

(i) after deducting all unrelieved losses of the person that may be deducted under

subsection (1)(a) or (b) in calculating that income; and

(ii) without reference to subsection (1)(c); and

(d) the transfer is made in writing and signed by both the associate and the person by the time the person must file a return of income for the tax year under section 235.

(4) Without limiting subsection (1), where for the tax year in which a long-term contract of a person is completed or otherwise realised by the person, the person has an unrelieved loss for the year or a previous tax year or years that is attributable to the long-term contract, the Commissioner may, by notice in writing, allow the loss to be-

(a) carried back to a previous tax year or years; and

(b) treated as an unrelieved loss for that year or years in an amount not exceeding the amount by which-

(i) amounts relating to the long-term contract that are included in calculating the income for that year or years from the business or investment to which the long-term contract relates; exceed

(ii) amounts relating to the long-term contract that are deducted in that calculation.

(5) An unrelieved loss of a person for a tax year is attributable to a long-term contract of the person to the extent that-

(a) the long-term contract relates to a business or investment of the person; and

(b) deductions in calculating the income from the business or investment for the year that relate to the contract exceed inclusions in that calculation that relate to the contract.

(6) For the purposes of calculating a non-resident person's income for any tax year, no deduction is allowed for an unrelieved loss with a source in Symmetrica-

(a) of the year or a previous tax year where no election is made by the person under section 213 with respect to the year; or

(b) of a tax year prior to a year referred to in paragraph (a).

(7) Subject to subsection (3)(c), where a person-

(a) calculates income for a tax year from more than one business or investment of the person; and

(b) may deduct an unrelieved loss in more than one such calculation, the person may choose the calculation or calculations in which the loss or part of the loss is deducted.

(8) For the purposes of this section-

"loss" of a tax year of a person from any business or investment is calculated as the excess of amounts deducted in calculating the person's income from the business or investment over amounts included in calculating such income; and

"unrelieved loss" means the extent to which a loss has not been deducted in calculating a person's or an associate's income under subsection (1) or (4).

Division II: Rules Governing Amounts Used in Calculating the Income Tax Base

Subdivision A: Central Concepts

Sec. 40. Tax Year

(1) Subject to this section, the tax year for every person is the calendar year.

(2) Subject to subsections (6), (7), and (8), a person may apply, in writing, to the Commissioner for approval to change the person's tax year from-

(a) the calendar year; or

(b) a twelve-month period previously approved by the Commissioner under subsection (3), to another twelve-month period.

(3) If in an application under subsection (2) the person shows a compelling need to change the person's tax year, the Commissioner may, by notice in writing, approve the application subject to any conditions as the Commissioner prescribes.

(4) The Commissioner may, by notice in writing, revoke an approval granted to a person under subsection (3).

(5) Where a person's tax year changes, the period from the start of the tax year during which the change occurs to the date of change is treated as a separate tax year.

(6) The tax year for every person's foreign branch that is not a foreigner's Symmetrican branch is the same as the tax year of its owner.

(7) The tax year for every non-resident partnership, trust, or company is the period, not exceeding 12 months, for which the entity makes up its accounts or, if it has no such period, the calendar year.

(8) The initial tax year of a person is the period of twelve months or less from the time the person starts to exist until the end of the person's tax year as calculated according to the previous subsections of this section.

Sec. 41. Payment, Amount Derived, and Cost Incurred

(1) For the purposes of this Act, "payment" means-

(a) the transfer by one person of an asset or money to another person or the transfer by another person of a liability to the one person;

(b) the creation by one person of an asset that on creation is owned by another person or the decrease by one person of a liability owed by another person;

(c) the provision by one person of services to another person; and

(d) the making available of an asset or money owned by one person for use by another person or the granting of use of such an asset or money to another person, and, subject to section 60(2), the one person is the "payer" and the other person is the "payee".

(2) Where a payment of the kind referred to in subsection (1)(c) or (d) spans more than one tax year of the payer or payee, the provision, availability, or use-

(a) from the commencement of the provision, availability, or use to the first ending of a tax year of either the payer or the payee is treated as a separate payment;

(b) from the ending of any tax year of the payer or the payee to the next ending of a tax year of either the payer or the payee, if the payment is of sufficient duration, is treated as a separate payment; and

(c) from the ending of the last tax year of the payer or the payee referred to in paragraph (a) or (b) to the end of the provision, availability, or use is treated as a separate payment.

(3) A person may be treated as making or receiving a payment, whether the payer is legally obliged to make the payment or the payee is legally entitled to receive the payment.

(4) For the purposes of this Act, but subject to Subdivision C of Division III and Division III of Part III-

"amount derived" by a person means a payment made to or received by the person or that the person is entitled to receive; and

"cost" of and "cost incurred" by a person mean a payment of the type referred to in subsection (1)(a) made by the person or which the person is obliged to make.

(5) A person is treated as-

(a) entitled to receive a payment if the person claims to be legally entitled to receive the payment and irrespective of whether the time for discharge of the entitlement is postponed or the entitlement is payable by instalments; and

(b) obliged to make a payment if the person claims to be legally obliged to make the payment; notwithstanding that the person is not so legally entitled or obliged.

Sec. 42. Reference to Amounts Included or Deducted in Calculating Income

For the purposes of this Division, unless the context otherwise requires, a reference to-

(a) calculating a person's income from a business or investment for a tax year includes a reference to calculating-

(i) gains and losses from the realisation of assets and liabilities of the business or investment during the year; and

(ii) net incomings or net outgoings for assets and liabilities of the business or investment during the year;

(b) amounts included or to be included in calculating a person's income from a business or investment for a tax year includes a reference to incomings for an asset or liability of the business or investment derived during the year; and

(c) amounts deducted or to be deducted in calculating a person's income from a business or investment includes a reference to outgoings for an asset or liability of the business or investment incurred during the year.

Subdivision B: Timing of Amounts

Sec. 45. Timing of Payments Made and Received

A payment is made and received-

(a) in the case of payments referred to in section 41(1)(a) and (b), at the time of transfer, creation, or decrease, as the case requires; and

(b) in the case of payments referred to in section 41(1) (c) and (d), during the time of the provision, availability, or use, as the case requires.

Sec. 46. Timing of Amounts Derived and Costs Incurred

(1) Subject to this Act, the determination of when an amount is derived or a cost is incurred by a person is made according to the person's basis of accounting for income tax purposes.

(2) An individual shall account for income tax purposes on a cash basis in calculating the individual's income from an employment or investment.

(3) A company shall account for income tax purposes on an accrual basis.

(4) Subject to subsections (2) and (3) and unless the Commissioner prescribes otherwise by notice in writing, a person shall account for income tax purposes on either a cash or accrual basis.

(5) Subject to subsections (2) and (3), a person may apply, in writing, for a change in the person's basis of accounting for income tax purposes and the Commissioner may, by notice in writing, approve the application but only if satisfied that the change is necessary to clearly reflect the person's gains and profits.

(6) If a person's basis of accounting for income tax purposes is changed, adjustments shall be made in the tax year of the change and that following the change so that-

(a) no amount included, deducted, or to be included or deducted in calculating the person's income is omitted or taken into account more than once; and

(b) no amount of foreign income tax is omitted or taken into account more than once in calculating foreign tax offsets.

Sec. 47. Cash Basis Accounting

Subject to this Act, a person who accounts for income tax purposes on a cash basis in calculating the person's income from an employment, business, or investment-

(a) derives an amount to be included in that calculation when payment is received or made available to the person; and

(b) incurs a cost to be deducted in that calculation when payment is made.

Sec. 48. Accrual Basis Accounting

(1) Subject to this Act, a person who accounts for income tax purposes on an accrual basis in calculating the person's income from a business or investment shall calculate the income in accordance with this section.

(2) A person derives an amount to be included in the calculation of income referred to in subsection (1)-

(a) in a case where the payment constituting the amount is to be received in return for a payment or payments made by the person (the "other payment"), when and to the extent that-

(i) the person is entitled to the payment;

(ii) the amount of the entitlement can be quantified with reasonable accuracy; and

(iii) the other payment has been made; or

(b) in any other case, when the payment is received.

(3) A person incurs a cost to be deducted in the calculation of income referred to in subsection (1)-

(a) in the case where the payment constituting the cost is to be made in return for a payment or payments received from another person (the "other payment"), when and to the extent that-

(i) the person is obliged to make the payment;

(ii) the amount of the obligation can be quantified with reasonable accuracy; and

(iii) the other payment has been received; or

(b) in any other case, when the payment is made.

(4) Where a person-

(a) either-

(i) incurs a cost to be deducted in calculating income referred to in subsection (1) for a tax year and if the person accounted for income tax purposes on a cash basis the deduction would be allowed in a future tax year; or

(ii) receives a payment during a tax year to be included in calculating that income for a future tax year and if the person accounted for income tax purposes on a cash basis the payment would be so included for the tax year of payment; and

(b) the reason or one of the reasons for the timing of the incurring or receipt is to defer or reduce income tax payable by the person incurring the cost or receiving the payment for any tax year, the Commissioner may, by notice in writing, adjust the time at which the cost or payment is recognised for income tax purposes to prevent the deferral or reduction.

(5) Where in calculating a person's income referred to in subsection (1)-

(a) the person includes a payment of a particular quantity to which the person is entitled or deducts a payment of a particular quantity that the person is obliged to make; and

(b) subsequently that entitlement or obligation is satisfied by a payment received or made by the person, as the case requires, of a different quantity, including by reason of a change in currency valuations, then the applicable adjustments referred to in

subsections (6), (7), and (8) shall be made at the time the payment is received or made.

(6) Where the payment referred to in subsection (5) was directly included or directly deducted in calculating the person's income from the business or investment, then-

(a) the amount by which the quantity included exceeds the quantity of the payment received or the amount by which the quantity of the payment made exceeds the quantity deducted, shall be directly deducted in calculating that income; or

(b) the amount by which the quantity of the payment received exceeds the quantity included or the quantity deducted exceeds the quantity of the payment made, shall be directly included in calculating that income.

(7) Where the payment referred to in subsection (5) is included as an incoming or included as an outgoing for an asset or liability of the business or investment that is still held or owed by the business or investment, then-

(a) the amount by which the quantity included exceeds the quantity of the payment received or the quantity of the payment made exceeds the quantity included, shall be treated as an outgoing for the asset or liability; or

(b) the amount by which the quantity of the payment received exceeds the quantity included or the quantity included exceeds the quantity of the payment made, shall be treated as an incoming for the asset or liability.

(8) Where the payment referred to in subsection (5) is included as an incoming or included as an outgoing for an asset or liability of the business or investment that is no longer held or owed by the business or investment, then-

(a) the amount by which the quantity included exceeds the quantity of the payment received or the quantity of the payment made exceeds the quantity included, shall be treated as a loss from the realisation of an asset or liability of the person of that business or investment used in the production of the person's income from the business or investment; or

(b) the amount by which the quantity of the payment received exceeds the quantity included or the quantity included exceeds the quantity of the payment made, shall be treated as a gain from the realisation of an asset or liability of the person of that business or investment.

Sec. 49. Reverse of Amounts Including Bad Debts

(1) Where a person has included an amount derived or deducted a cost incurred in calculating the person's income from an employment, business, or investment and-

(a) the person later refunds the amount or recovers the cost, as the case requires;

(b) in the case where an amount derived was included on an accrual basis, the person later disclaims an entitlement to receive the amount or, in the case where the amount constitutes a debt claim of the person, the person writes off the debt as bad; or

(c) in the case where a cost incurred was deducted on an accrual basis, the person later disclaims an obligation to incur the cost, the person shall make the adjustments referred to in subsection (3) at the time the refund, recovery, disclaimer, or write off occurs.

(2) For the purposes of subsection (1), a person may only disclaim the entitlement to a payment or write off as bad a debt claim of the person-

(a) in the case of a debt claim of a financial institution, after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Commonwealth of Symmetrica Bank; and

(b) in any other case, after the person has taken all reasonable steps in pursuing payment and the person reasonably believes that the entitlement or debt claim will not be

satisfied.

(3) The adjustments referred to in subsection (1) are:

(a) where an amount was directly included in calculating the person's income from the employment, business, or investment, a similar amount shall be directly deducted in calculating the person's income from that employment, business, or investment;

(b) where a cost was directly deducted in calculating the person's income from the business or investment, a similar amount shall be directly included in calculating the person's income from that business or investment;

(c) where an amount was included as an incoming for an asset or liability of the business or investment that is still held or owed by the business or investment, a similar amount shall be treated as an outgoing for the asset or liability;

(d) where a cost was included as an outgoing for an asset or liability of the business or investment that is still held or owed by the business or investment, a similar amount shall be treated as an incoming for the asset or liability;

(e) where an amount was included as an incoming for an asset or liability of the business or investment that is no longer held or owed by the business or investment, a similar amount shall be treated as a loss from the realisation of an asset or liability of the person of that business or investment used in the production of income from the business or investment; and

(f) where a cost was included as an outgoing for an asset or liability of the business or investment that is no longer held or owed by the business or investment, a similar amount shall be treated as a gain from the realisation of an asset or liability of the person of that business or investment.

Sec. 50. Averaging Inclusions and Deductions Under Long-term Contracts

(1) For the purposes of calculating a person's income for a tax year from an employment, business, or investment, estimated cumulative inclusions and deductions under a long-term contract of the person at the time the contract is to end shall be directly included or deducted in calculating that income to the extent-

(a) the inclusions or deductions multiplied by the percentage of the contract completed at the end of the year or, if earlier, the time at which the contract is realized by the person, exceed

(b) amounts directly included or deducted under the contract (including by reason of previous applications of this section) in calculating the income of the person of a previous tax year or the income of a person who was a previous owner of the contract.

(2) A "long-term contract" of a person is a contract-

(a) the term of which exceeds or is reasonably likely to exceed six months and spans or is reasonably likely to span more than one tax year; and

(b) that is either-

(i) a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services; or

(ii) a contract with a deferred return that is not an excluded contract.

(3) Every person who is a party to a contract described in subsection (2)(a), other than an excluded contract or a contract described in subsection (2)(b)(i), shall-

(a) periodically estimate whether the contract will have a positive or negative outcome and the percentage of the contract completed; and

(b) on that basis determine whether the contract is a long-term contract.

(4) For the purposes of estimating whether a contract will have a positive or negative outcome and the percentage of the contract completed, a contract with a term that cannot be

determined with reasonable accuracy is treated as-

(a) in the case of a contract of employment, ending five years after the date of estimation; and

(b) in any other case, as ending at the time that would result in-

(i) the greatest positive outcome for the contract per month of the contract (ignoring adjustments for inflation); or

(ii) where the contract may only result in a negative outcome, the smallest negative outcome per month of the contract (ignoring adjustments for inflation).

(5) Where the Commissioner is not satisfied with an estimate of a person under subsection (3), the Commissioner shall, by notice in writing, make an estimate of whether the contract will have a positive or negative outcome and the percentage of the contract completed, which estimate shall be treated as the estimated positive outcome, estimated negative outcome, and percentage of the contract completed, as the case requires.

(6) The outgoings for an asset or liability being a long-term contract of a person include-

(a) the amount by which amounts under the contract directly included in calculating the person's income for a tax year as a result of subsection (1) exceed amounts that would have been so included for the year ignoring subsection (1); and

(b) the amount by which amounts under the contract directly deducted in calculating the person's income for a tax year as a result of subsection (1) are less than amounts that would have been so deducted for the year ignoring subsection (1).

(7) The incomings for an asset or liability being a long-term contract of a person include-

(a) the amount by which amounts under the contract directly included in calculating the person's income for a tax year as a result of subsection (1) are less than amounts that would have been so included for the year ignoring subsection (1); and

(b) the amount by which amounts under the contract directly deducted in calculating the person's income for a tax year as a result of subsection (1) exceed amounts that would have been so deducted for the year ignoring subsection (1).

(8) For the purposes of this section-

"contract with a deferred return" means any contract of a person unless the person shows that at any time ("the time") during every six-month period from the commencement of the contract-

(a) in the case of an estimated positive outcome to the contract-

(i) cumulative inclusions exceed cumulative deductions under the contract to the time; and

(ii) the extent to which cumulative inclusions exceed cumulative deductions under the contract at the time is more than 80 percent of the estimated positive outcome multiplied by the percentage of the contract completed at the time; or

(b) in the case of an estimated negative outcome to the contract, 80 percent of the extent to which cumulative deductions exceed cumulative inclusions under the contract at the time is less than the estimated negative outcome multiplied by the percentage of the contract completed to the time;

"cumulative deductions" under a contract of a person at a particular time means amounts under the contract that may be directly deducted at the time or a previous time in calculating the person's income from a business or investment (determined ignoring subsection (1));

"cumulative inclusions" under a contract of a person at a particular time means amounts under the contract required to be directly included at the time or a previous time in calculating the person's income from an employment, business, or investment (determined ignoring subsection (1));

"estimated negative outcome" with respect to a contract of a person means an estimate of the excess of cumulative deductions over cumulative inclusions under the contract at the time the contract is to end (ignoring any adjustments for inflation);

"estimated positive outcome" with respect to a contract of a person means an estimate of the excess of cumulative inclusions over cumulative deductions under the contract at the time the contract is to end (ignoring adjustments for inflation);

"excluded contract" means-

(a) any contract consisting of an interest in an entity; and

(b) any contract of investment insurance; and

"percentage of contract completed" at a particular time ("the time")-

(a) in the case of a contract of a type referred to in subsection (2)(b)(i), is determined by comparing cumulative deductions under the contract at the time with estimated cumulative deductions under the contract at the time the contract is to end;

(b) subject to paragraph (a)-

(i) to the extent to which a contract is for employment or services, is determined by comparing the total market value of hours worked under the contract at the time with estimated total market value of hours to be worked under the contract by the time the contract is to end;

(ii) to the extent to which a contract involves a loan, is determined by comparing-

(a) the average capital outstanding under the loan to the time multiplied by the number of days in the term of the loan to the time, with

(b) estimated average capital outstanding under the loan over the total term of the loan multiplied by the number of days in the term of the loan; or

(iii) to the extent to which a contract involves a lease or is a contract of general insurance, is determined by comparing the time that has elapsed under the contract to the time with the total term of the contract; or

(c) to the extent to which a contract is not covered by the previous paragraphs, is determined in the manner provided by the regulations or, in the absence of regulations, by comparing cumulative deductions under the contract at the time with estimated cumulative deductions under the contract at the time the contract is to end.

Subdivision C: Quantification of Amounts

Sec. 55. Quantification of Payments, Amounts Derived, and Costs Incurred

(1) A payment is quantified in an amount equal to-

(a) for payments referred to in section 41(1)(a) and (b), money and the market value of assets or liabilities transferred, created, or decreased, as the case requires;

(b) for payments consisting of the availability for use or use of a motor vehicle wholly or partly for the private purposes of the payee, the amount determined in accordance with the regulations;

(c) for payments consisting of the provision of-

(i) the services of a housekeeper, chauffeur, gardener, or other domestic assistant;

(ii) any meal, refreshment, or entertainment; or

(iii) utilities in respect of the payee's place of residence, the amount of the costs incurred by the payer in making the provision as reduced by any contribution made by the payee towards the provision;

(d) for payments consisting of the provision of a loan, the amount by which-

(i) the interest that would have been paid by the payee during the tax year of the payee in which the payment is made if interest were payable under the loan at the statutory rate for the year, exceeds

(ii) the interest paid by the payee during the year under the loan, if any; and

(e) for other payments referred to in section 41(1)(c) and (d), the value of the benefit of the payment to a reasonable person in the position of the payee, and in the case of paragraphs (a) and (e), the time of valuation is the time the payment is derived, incurred, made, received, or otherwise taken into account for income tax purposes including where it is taken into account as an amount that is derived or cost that is incurred by a person.

(2) For the purposes of this Act, the amount of a payment is quantified without reduction for any income tax withheld from the payment under Subdivision A of Division II of Part V.

(3) An amount derived or cost incurred is quantified in an amount equal to the amount of the payment constituting the amount or cost.

Sec. 56. Determination of Market Value

The market value of an asset or liability-

(a) is determined without regard to any restriction on transfer of the asset or liability or the fact that the asset is not otherwise convertible into or the liability cannot be satisfied with a payment of money or money's worth; and

(b) unless otherwise stated, is quantified in a positive or negative amount, as the case requires.

Sec. 57. Quantification in SYs

(1) For the purposes of this Act, a person's income, amounts to be included and deducted in calculating that income, and the net incomings and net outgoings for an asset or liability shall be quantified in SYs.

(2) Subject to subsection (3), where an amount to be included or deducted in calculating a person's income for a tax year is quantified in a currency other than the SY, the amount shall be converted at the exchange rate applying between the currency and the SY at the time the amount is derived, incurred, made, received, or otherwise taken into account for income tax purposes.

(3) For the purposes of subsection (2) and where the Commissioner permits by notice in writing, a person may use the average exchange rate applying during the tax year as determined by the Commissioner.

Subdivision D: Allocation of Income and Amounts

Sec. 60. Allocation of Payments, Amounts Derived, and Costs Incurred

(1) A payment is made by the payer of the payment and made to or received by the payee of the payment.

(2) Where a person-

(a) indirectly benefits from a payment; or

(b) directs who is to be the payee of the payment, and the payer, an associate of the payer, or a third person under an arrangement with the payer or an associate of the payer intends the payment to benefit the person,

the Commissioner may, by practice note generally or by notice in writing served on the person-

(c) treat the person as the payee of the payment;

(d) treat the person as the payer of the payment; or

(e) treat the person as the payee of the payment and as making an equal payment to the

person who would be considered the payee of the payment if this paragraph were ignored.

(3) An amount is derived by the payee of the payment constituting the amount and a cost is incurred by the payer of the payment constituting the cost.

Sec. 61. Jointly Owned Investment

For the purposes of calculating a person's income from an investment that is jointly owned with another person, amounts to be included and deducted in that calculation shall be apportioned among the joint owners in proportion to their respective interests in the investment.

Sec. 62. Transfer Pricing and Arrangements Between Associates

In any arrangement between persons who are associates, the Commissioner may, by notice in writing, distribute, apportion, or allocate amounts to be included or deducted in calculating income and foreign income tax paid between the persons as is necessary to reflect the taxable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length.

Sec. 63. Income Splitting

(1) Where a person attempts to split income with another person, the Commissioner may, by notice in writing, adjust amounts to be included or deducted in calculating the income of each person to prevent any reduction in tax payable as a result of the splitting of income.

(2) Subject to subsection (3), a reference in subsection (1) to a person having attempted to split income includes a reference to a transfer, either directly or indirectly through one or more interposed entities, between the person and an associate of the person of-

(a) amounts to be derived or costs to be incurred; or

(b) an asset or liability with the result that the transferee receives or enjoys amounts derived from or incurs costs in owning the asset or owing the liability.

(3) Subsection (2) only applies where the reason or one of the reasons for the transfer is to lower the total tax payable by the person or the associate.

(4) In determining under subsection (2) whether a person is seeking to split income, the Commissioner shall consider the market value of any payment made for the transfer.

Subdivision E: Characterisation of Amounts

Sec. 65. Characterisation of Payments, Amounts Derived, and Costs Incurred

(1) Subject to this Subdivision, the character of a payment made or received is determined according to the legal nature of the arrangement with respect to which the payment is made.

(2) The character of an amount derived or cost incurred is determined by the character of the payment constituting the amount or cost.

Sec. 66. Compensation and Recovery Payments

(1) Subject to section 49, subsection (2) applies where a person or an associate of the person derives an amount ("the compensation amount") which compensates for or represents recovery of another amount (the "primary amount"), where the primary amount is-

(a) income or an amount to be included in calculating income of the person from an employment, business, or investment, which the person expects or expected to derive;

(b) a loss or an amount to be deducted in calculating income of the person from a business or investment, which the person has incurred or which the person expects or expected to incur; or

(c) a loss in value of an asset or liability or an increase in the amount of a liability of a business or investment of the person.

(2) A compensation amount referred to in subsection (1) shall-

(a) in the case where if the primary amount were derived or incurred it would constitute

income, a loss, or be directly included or deducted in calculating income of the person from the employment, business, or investment, be so included in calculating the income;

(b) in the case where if the primary amount were derived or incurred it would be included as an incoming or outgoing for an asset or liability of the person's business or investment still held or owed by the business or investment, be included as an incoming for the asset or liability; and

(c) in any other case, be treated as a gain from the realisation of an asset or liability of the person of the business or investment.

Sec. 67. Payments Under Annuities, Instalment Sales, and Finance Leases

(1) Payments made to a person under an annuity or by a person acquiring an asset under an instalment sale or finance lease are treated as interest and a repayment of capital under a debt claim in accordance with this section.

(2) All payments referred to in subsection (1) shall be aggregated and the total divided into two portions calculated as follows:

(a) a capital portion, being the net outgoings for the annuity or the asset transferred, as the case requires, immediately before the first payment referred to in subsection (1); and

(b) an interest portion, if any, being the total of all payments referred to in subsection (1) less the capital portion.

(3) The interest and capital portions referred to in subsection (2) shall be spread over the payments referred to in subsection (1) as though the annuity, instalment sale, or finance lease were a blended loan with interest compounded six-monthly.

(4) Each payment referred to in subsection (1) shall be divided into two portions in accordance with subsection (3), the interest portion treated as interest paid or to be paid and the capital portion treated as a repayment of capital paid or to be paid under a debt claim.

(5) For the purposes of this section-

"annuity" means a periodic payment other than one of the type referred to in section 18(2)(a) (determined ignoring subsection (4)) or under an instalment sale;

"blended loan" means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of capital where the interest part is calculated on capital outstanding at the time of each payment and the rate of interest is uniform over the term of the loan;

"finance lease" with respect to leasing an asset means a lease where-

(a) the lease agreement provides for transfer of ownership following the end of the lease term, or the lessee has an option to acquire the asset after expiry of the lease term for a fixed or presupposed price;

(b) the lease term exceeds 75 percent of the useful life of the asset;

(c) the estimated market value of the asset after expiry of the lease term is less than 20 percent of its market value at the commencement of the lease;

(d) in the case of a lease that commences before the last 25 percent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds 90 percent of the market value of the asset at the commencement of the lease term; or

(e) the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to any person other than the lessee;

"instalment sale" means a realisation of an asset by way of sale under which any payment to be made to the seller in respect of the realisation is to be made more than one year after the realisation;

"lease term" includes an additional period for which the lessee has an option to renew a lease; and

"present value" of lease payments is calculated using a discount rate equal to the statutory rate.

Sec. 68. Source of Income, Losses, and Payments

(1) A person's income from any employment, business, or investment has a source in Symmetrica to the extent to which-

(a) the amounts directly included in calculating that income that have a source in Symmetrica, exceed

(b) the amounts directly deducted in calculating that income that have a source in Symmetrica.

(2) A person's loss from any business or investment has a source in Symmetrica to the extent to which-

(a) the amounts directly deducted in calculating income from that business or investment that have a source in Symmetrica, exceed

(b) the amounts directly included in calculating that income that have a source in Symmetrica.

(3) Amounts directly included in calculating income have a source in Symmetrica where they consist of-

(a) incomings, gains, and amounts, referred to in section 17(2)(b), (c), or (d) or section 18(2)(b) or (c), to the extent to which a domestic asset or domestic liability is involved; and

(b) subject to paragraph (a), payments that have a source in Symmetrica.

(4) Amounts directly deducted in calculating income have a source in Symmetrica where they consist of-

(a) allowances referred to in section 28(1)(a) to the extent to which they relate to domestic assets;

(b) costs referred to in section 29(1) and allowances referred to in section 31 to the extent to which-

(i) where the costs or allowances relate to moveable tangible assets used by a person who conducts a business of land, sea, or air transport operator or charterer to carry passengers, mail, livestock, or other moveable tangible assets, the assets are used to carry-

(a) passengers who embark; or

(b) mail, livestock, or other moveable tangible assets that are embarked, in Symmetrica, other than as a result of transshipment; and

(ii) in other cases, they relate to domestic assets;

(c) losses from the realisation of business assets, investment assets, liabilities of a business, and liabilities of an investment where the asset or liability involved is a domestic asset or domestic liability; and

(d) subject to paragraphs (a) to (c), payments that have a source in Symmetrica.

(5) The following payments have a source in Symmetrica:

(a) dividends paid by a resident company;

(b) interest paid by a resident person;

(c) natural resource payments made in respect of or calculated by reference to natural resources taken from land or the sea situated within Symmetrica or its territorial waters;

(d) rent paid for the use of, right to use, or forbearance from using an asset situated in Symmetrica;

(e) royalties paid for the use of, right to use, or forbearance from using an asset in Symmetrica;

(f) premiums for general insurance paid to and proceeds from general insurance paid by a person in respect of the insurance of any risk in Symmetrica;

(g) payments received by a person who conducts a business of land, sea, or air transport operator or charterer in respect of-

(i) the carriage of passengers who embark; or

(ii) mail, livestock, or other moveable tangible assets that are embarked, in Symmetrica, other than as a result of transshipment;

(h) payments received by a person who conducts a business of transmitting messages by cable, radio, optical fibre, or satellite communication in respect of the transmission of messages by apparatus established in Symmetrica, whether or not such messages originate in Symmetrica;

(i) payments, including service fees, of a type not mentioned in paragraphs (g) or

(h) for or attributable to employment exercised, service rendered, or a forbearance from exercising employment or rendering service-

(i) in Symmetrica, regardless of the place of payment; or

(ii) where the payer is the Government of Symmetrica, irrespective of the place of exercise, rendering, or forbearance;

(j) proceeds of investment insurance and retirement payments not falling within paragraph (i) (the "return") paid by a resident person and any premium or retirement contribution to a resident person to secure such a return;

(k) gifts and other ex gratia payments to the extent received in respect of business or investment conducted with domestic assets; and

(l) payments not mentioned in the above paragraphs made in respect of-

(i) the acquisition of a domestic asset, incurring of a domestic liability, or realisation of such an asset or liability; or

(ii) activity conducted or a forbearance from conducting activity in Symmetrica.

(6) Any income, loss, amount, or payment that is not treated by the above subsections as having a source in Symmetrica is treated as having a foreign source.

(7) For the purposes of determining in which country any income, loss, amount, or payment having a foreign source is sourced, the rules in the above subsections apply as though references in this Act to Symmetrica were references to a particular country.

Sec. 69. Arrangements Between Associates, Income Splitting, and Tax Avoidance Arrangements

(1) Notwithstanding anything in this Act, the Commissioner may-

(a) in making any adjustment under section 62 or 63 re-characterise the source and type of any income, loss, amount, or payment;

(b) by notice in writing, re-characterise the source and type of any income, loss, amount, or payment derived, incurred, made or received under a tax avoidance arrangement or an arrangement the form of which does not reflect its substance; and

(c) by notice in writing, disregard an arrangement or part of an arrangement that does not have substantial economic effect.

(2) For the purposes of this section-

(a) a reference to income, a loss, an amount, or a payment (the "amount") being of a particular type includes the amount being-

(i) from a particular employment, business, or investment of a person;

(ii) included or deducted in calculating a person's income from a particular employment, business, or investment or not being so included or deducted;

or

(iii) a final withholding payment or investment final withholding payment; and

(b) "tax avoidance arrangement" means any arrangement, one of the main purposes of which is the avoidance or reduction of liability to tax of any person for any tax year.

Division III: Assets and Liabilities

Subdivision A: Central Concepts

Sec. 75. Calculation of Gains and Losses

(1) A person's gain from the realisation of an asset or liability is the amount by which the sum of the incomings for the asset or liability exceeds the sum of the outgoings for the asset or liability at the time of realisation.

(2) The loss of a person from the realisation of an asset or liability is the amount by which the sum of the outgoings for the asset or liability exceeds the sum of the incomings for the asset or liability at the time of realisation.

Sec. 76. Definitions Relating to Assets

(1) For the purposes of this Act-

"asset"-

(a) means-

(i) any kind of property or other amalgam of integrated rights and obligations; or

(ii) subject to subparagraph (i), a single right, whether of a legal or equitable nature, that at the time acquired has a nil or positive market value;

(b) includes currency, goodwill, know-how, an owner's interest in a foreign branch, and a part of an asset; and

(c) excludes-

(i) insurance or a right to compensation held by a person to the extent to which it covers a loss with respect to any asset owned, liability owed, or the incurring of a liability by the person;

(ii) losses available for transfer under section 33(1)(c) or foreign income tax available for transfer under section 200(3)(b); and

(iii) an entitlement of the type referred to in section 48(2)(a)(i);

"business asset" means an asset to the extent to which it is used in a business including where the asset is held for sale in a business, but excludes trading stock or a depreciable asset of a business;

"debt claim"-

(a) means a right of one person to receive a payment or repayment from another person;

(b) includes a deposit with a financial institution, account receivable, note, bill of exchange, or bond and, in accordance with section 67, rights under an annuity, finance lease, or instalment sale; and

(c) excludes an interest in an entity;

"depreciable asset"-

(a) means an asset to the extent to which it is used in the production of income from a business or investment and that is likely to lose value because of wear and tear, obsolescence, or the passing of time; and

(b) excludes land and trading stock;

"domestic asset" means-

(a) an asset owned by a resident person other than land or a building that is not situated in Symmetrica; and

(b) land or a building situated in Symmetrica;

"foreign currency asset" means a debt claim that is denominated in a currency other than

SYs;

"investment asset" means an asset other than-

(a) a business asset, a depreciable asset, or trading stock;

(b) an asset being insurance or a right to compensation to the extent to which it covers burial, dental, medical, or psychiatric costs or costs incidental to those costs to be incurred in respect of an individual; or

(c) an asset that is held primarily for personal use by the person owning the asset and that is not-

(i) insurance or a right to compensation; or

(ii) used in the production of gains and profits; and

"trading stock" means assets owned by a person that are sold or intended to be sold in the ordinary course of a business conducted by the person, work in progress on such assets, and inventories of materials to be incorporated into such assets.

(2) Where an asset owned by a person has been used by the person in a particular manner, including where it is used in the production of the person's income from a business or investment, but the asset is in temporary disuse, the asset is treated as used in the particular manner during the period of disuse.

Sec. 77. Acquisition and Ownership of Assets

(1) A person acquires an asset-

(a) at the time the person begins to own the asset; or

(b) in the case where the person realises the asset in any of the manners mentioned in section 82(1)(c) to (h), at the time of realisation, and, for the avoidance of doubt, in the case of paragraph (b) a person may acquire an asset that the person already owns immediately before realisation of the asset by the person.

(2) A person conducting a business is treated as beginning to own an asset that, if owned by the person (tested without reference to this subsection), would be trading stock of the business-

(a) when the asset is first available to the person for sale in the ordinary course of the business; or

(b) when the person otherwise begins to own the asset, whichever is earlier.

(3) Where an asset is leased to a person under a finance lease, the person is treated as acquiring the asset at the commencement of the lease and owning the asset during the term of the lease.

(4) Where a person is treated as acquiring ownership of an asset by reason of subsection (2) or (3), the person who owned the asset immediately before the acquisition is treated as having transferred and parted with the ownership of the asset to the person treated as acquiring that ownership at the time of the acquisition.

(5) Where the acquirer of an asset referred to in subsection (2) or (3) returns the asset to the transferor referred to in subsection (4) or the lease ends, as the case requires, before ownership passes from the transferor other than by reason of subsection (4), the transferor is treated as re-acquiring ownership of the asset.

Sec. 78. Definitions Relating to Liabilities

For the purposes of this Act-

"debt obligation" means the obligation corresponding to a debt claim;

"domestic liability" means a liability owed by a resident person;

"foreign currency liability" means a debt obligation that is denominated in a currency other than SYs; and

"liability"-

(a) means-

(i) any kind of property or other amalgam of integrated rights and obligations; or

(ii) subject to subparagraph (i), a single obligation, whether of a legal or equitable nature, that at the time incurred has a

negative market value;

(b) includes a guarantee granted and a part of a liability; and

(c) excludes-

(i) an entity's rights and obligations with respect to an interest of a beneficiary in the entity; or

(ii) an obligation of the type referred to in section 48(3)(a)(i).

Sec. 79. When a Liability is Incurred

A person incurs a liability-

(a) when all the events required to give rise to the obligation or obligations forming the liability have occurred; or

(b) in the case where a person realises the liability in any of the manners mentioned in section 82(2)(c) to (e), at the time of realisation, and, for the avoidance of doubt, in the case of paragraph (b) a person may incur a liability that the person already owes before realisation of the liability by the person.

Sec. 80. Outgoings

(1) Subject to this Act, outgoings for an asset or liability of a person means-

(a) in the case of an asset, costs incurred by the person in the person's most recent acquisition of the asset including-

(i) where relevant, costs of construction or production of the asset; and

(ii) any amount required by Subdivision B of Division I to be included in calculating the person's income as a result of the acquisition;

(b) costs incurred by the person in owning the asset or owing the liability between the date of the person's most recent acquisition of the asset or the incurring of the liability and the date of the asset or liability's next realisation by the person including-

(i) costs of altering, improving, and maintaining the asset or liability and, in the case of an asset, repairing the asset;

(ii) costs incurred under the asset or liability whether by way of interest, rent, royalty, covenant to repair, or otherwise; and

(iii) any amount required by Subdivision B of Division I to be included in calculating the person's income as a result of another person incurring on behalf of the first-mentioned person costs of the type previously mentioned in this paragraph;

(c) costs incurred by the person for the next realisation of the asset or liability; and

(d) incidental costs incurred by the person in the most recent acquisition of the asset or incurring of the liability and in the next realisation of the asset or liability by the person, but excludes consumption costs, excluded costs, and costs to the extent to which they may be deducted in calculating the person's income under Subdivision D of Division I.

(2) Subject to subsection (3), outgoings for trading stock of a business of a person are determined-

(a) in the case of a person accounting for income tax purposes on a cash basis, using the prime-cost or absorption-cost method; and

(b) in the case of a person accounting for income tax purposes on an accrual basis, using the absorption-cost method.

(3) Where assets owned by a person, being-

(a) trading stock; and

(b) any other type of asset prescribed by the regulations, are fungible and not readily identifiable, the person may elect for the outgoings for the assets to be determined according to the first-in-first-out method or the average-cost method but, once chosen, the method may only be changed with the written permission of the Commissioner.

(4) For the purposes of this section-

"absorption-cost method" means the generally accepted accounting principle under which the cost of trading stock is the sum of direct asset costs, direct labour costs, and factory overhead costs;

"average-cost method" means the generally accepted accounting principle under which outgoings are allocated to fungible assets of a particular type owned by a person based on a weighted average cost of all assets of that type owned by the person;

"direct labour costs" means labour costs incurred by a person that directly relate to the production of trading stock;

"direct asset costs" means costs incurred by a person in acquiring any asset or assets, as described in subsection (1)(a), that constitute trading stock or become an integral part of trading stock produced;

"factory overhead costs" means all costs incurred by a person in producing trading stock except direct labour and direct asset costs;

"first-in-first-out method" means the generally accepted accounting principle under which outgoings are allocated to a fungible asset of a particular type owned by a person based on the assumption that assets of that type owned by the person are realised in the order of their acquisition;

"incidental costs" incurred by a person in acquiring an asset, incurring a liability, or realizing an asset or liability include-

(a) advertising costs, taxes, duties, and other costs of transfer with respect to the acquiring, incurring, or realising; and

(b) costs of establishing, preserving, or defending ownership of the asset or costs of establishing or defeating the liability, and the costs referred to in paragraphs (a) and (b) include any related remuneration for the services of an agent, accountant, auctioneer, broker, consultant, legal advisor, surveyor, or valuer;

"prime-cost method" means the generally accepted accounting principle under which the cost of trading stock is the sum of direct asset costs, direct labour costs, and variable factory overhead costs; and

"variable factory overhead costs" means factory overhead costs that vary directly with changes in volume of trading stock produced.

Sec. 81. Incomings

Subject to this Act, incomings for an asset or liability of a person means-

(a) in the case of a liability, amounts derived by the person in respect of incurring the liability;

(b) amounts derived by the person in respect of owning the asset or owing the liability between the date of the person's most recent acquisition of the asset or the incurring of the liability and the date of the asset or liability's next realisation by the person including-

(i) amounts derived from altering or decreasing the value of the asset or liability or increasing the liability; and

(ii) amounts derived under the asset or liability whether by way of interest, rent, royalty, covenant to repair, or otherwise; and

(c) amounts derived or to be derived by the person in respect of the next realisation of the asset or liability; but excludes any amount to the extent that it is an exempt amount, a final

withholding payment, or, in the case of an asset or liability other than trading stock, an amount to be included in calculating the person's income under Subdivision B of Division I.

Sec. 82. Realisation

(1) A person who owns an asset is treated as realising the asset-

(a) subject to paragraph (b), when the person parts or is treated as parting with ownership of the asset including when the asset is-

(i) sold, exchanged, transferred, distributed, or combined with another asset or a liability;

(ii) made available for sale in the ordinary course of a business engaged in by another person or leased to another person under a finance lease as described in section 77(2) and (3), respectively; or

(iii) cancelled, redeemed, destroyed, lost, expired, or surrendered;

(b) in the case of an asset of a person who ceases to exist, including a deceased individual, immediately before the person ceases to exist;

(c) in the case of an asset other than a Class 1, 2, 3, 4, or 5 depreciable asset or trading stock, where the sum of the incomings for the asset exceeds the sum of the outgoings for the asset;

(d) in the case of an asset that is a debt claim, when-

(i) where the debt claim is owned by a financial institution, the debt claim becomes a bad debt as determined in accordance with the relevant standards established by the Commonwealth of Symmetrica Bank and the institution writes the debt off as bad; and

(ii) in any other case, the person reasonably believes the debt claim will not be satisfied, the person has taken all reasonable steps in pursuing the debt claim, and the person writes the debt off as bad;

(e) in the case of an asset that is a business asset, depreciable asset, investment asset, or trading stock, immediately before the person begins to use the asset in such a way that it ceases to be an asset of the type it was immediately prior to that use;

(f) in the case of a foreign currency asset, on the last day of each tax year;

(g) in the case of an asset owned by an entity, in the circumstances referred to in section 171(1); and

(h) subject to subsection (3), in the case of assets owned by a resident person other than land or buildings situated in Symmetrica, immediately before the person becomes a non-resident person.

(2) A person who owes a liability is treated as realising the liability-

(a) subject to paragraph (b), when the person parts with the obligations constituting the liability including when the liability is transferred, exchanged, satisfied, cancelled, released, expired, or combined with another liability or an asset;

(b) in the case of a liability of a person who ceases to exist, including a deceased individual, immediately before the person ceases to exist;

(c) in the case of a foreign currency liability, on the last day of each tax year;

(d) in the case of a liability of an entity, in the circumstances referred to in section 171(1); and

(e) subject to subsection (3), in the case of a liability owed by a resident person, immediately before the person becomes a non-resident person.

(3) Where a person to whom subsection (1)(h) or (2)(e) would otherwise apply-

(a) intends to re-acquire in the future status as a resident person; and

(b) provides the Commissioner with sufficient security to satisfy any tax liability that would otherwise arise by reason of those subsections, the Commissioner may determine, in writing and on such terms and conditions as the Commissioner thinks fit, that the person does not realise an asset or liability by reason of those subsections.

Subdivision B: Depreciable Assets, Allowances, and Inclusions

Sec. 85. Classification and Pooling of Depreciable Assets

(1) Depreciable assets are classified as follows:

Class	Depreciable Assets
1	Computers and data handling equipment
2	Automobiles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; construction and earth-moving equipment
3	Buses with a seating capacity of 30 or more passengers; heavy general purpose or specialised trucks; trailers and trailer-mounted containers; plant and machinery used in manufacturing or mining operations
4	Railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any asset not included in another Class;
5	Natural resource exploration and production rights and assets referred to in subsection (3) in respect of natural resource prospecting, exploration, and development costs;
6	Buildings, structures, and similar works of a permanent nature
7	Intangible assets other than those in Class 5

(2) Each depreciable asset owned and used by a person during a tax year in the production of the person's income from a particular business or investment shall be, at the time the asset is first owned and so used since its most recent acquisition, placed in a pool-

(a) in the case of a Class 1, 2, 3, 4, or 5 depreciable asset other than one referred to in paragraph (c), with all other assets of the same Class so owned and used by the person in that business or investment;

(b) in the case of a Class 6 or 7 depreciable asset, of its own separately from other assets of that Class or any other Class; and

(c) in the case of a moveable tangible

asset used by a person who conducts a business of land, sea, or air transport operator or charterer to carry passengers, mail, livestock, or other moveable tangible assets, with all other assets of the same Class so owned and used for carriage by the person in that business, and those pools are referred to as the person's pools of depreciable assets for the year.

(3) To the extent not otherwise provided, costs incurred by a person in the production of the person's income from a business in respect of natural resource prospecting, exploration, and development are treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.

Sec. 86. Depreciation Allowance

(1) Subject to this section, an allowance is granted to a person for a tax year for each of the person's pools of depreciable assets equal to the depreciation for the year of each pool calculated in accordance with subsections (2) and (7).

(2) Depreciation for a tax year for each of a person's pools of depreciable assets is calculated-

(a) in the case of Class 1, 2, 3, 4, and 5 pools, according to the diminishing value method; and

(b) in the case of Class 6 and 7 pools, according to the straight line method, using the following formula:

$$\mathbf{A \times B \times C / 365}$$

where-

A is the depreciation basis of the pool at the end of the tax year;

B is the depreciation rate applicable to the pool; and

C is the number of days in the person's tax year.

(3) The depreciation basis of a Class 1, 2, 3, 4, or 5 pool of depreciable assets of a person at the end of a tax year is the total of-

(a) the depreciation basis of the pool at the end of the previous tax year, if any, after deducting depreciation for that pool calculated under subsections (2) and (7) for that year; and

(b) amounts added to the depreciation basis of the pool during the tax year under subsection (5) in respect of outgoings for assets in or added to the pool, reduced, but not below zero, by incomings for the assets in the pool derived during the year.

(4) The depreciation basis of a Class 6 or 7 pool of depreciable assets of a person at the end of a tax year is the total of-

(a) the depreciation basis of the pool at the end of the previous tax year; and

(b) amounts added to the depreciation basis of the pool during the tax year under subsection (5) in respect of outgoings for the asset in the pool, reduced, but not below zero, by incomings for the asset in the pool derived during the year.

(5) Costs that are an outgoing for a depreciable asset included in a person's pools of depreciable assets are added to the depreciation basis of the person's relevant pool in two portions as follows:

(a) the first portion is added at the time the asset is added to the pool in accordance with section 85 or the cost is incurred, whichever is later, and calculated in accordance with the following formula:

$$\mathbf{A / 4 \times B}$$

where-

A is-

(i) 4 if the portion is to be added nine months or more before the end of the tax year in which the addition is to be made;

(ii) 3 if the portion is to be added six months or more but less than nine months before the end of the year;

(iii) 2 if the portion is to be added three months or more but less than six months before the end of the year; and

(iv) 1 if the portion is to be added less than three months before the end of the year; and

B is the amount of the cost; and

(b) the remaining portion of the cost is added during the tax year following that in which the first portion is added, but not if the pool has been dissolved under section 87(2) in the meantime.

(6) The depreciation rates applicable to each pool referred to in subsection (2) are:

Class	Rate
1	40%
2	35%
3	30%
4	20%
5	20%
6	10%
7	1 divided by the useful life of the asset in the pool calculated at the time the asset is most recently acquired by the person and rounded down to the nearest half year

(7) If the depreciation basis of a pool of depreciable assets at the end of a tax year reduced by depreciation calculated under subsection (2) produces an amount that is less than SY 1000, additional depreciation of the pool is calculated as equal to that amount.

(8) The allowance granted to a person under subsection (1) for a tax year with respect to a Class 6 or 7 pool of depreciable assets shall not exceed the depreciation basis of the pool at the end of the year reduced by all other such allowances granted to the person in previous tax years in respect of the pool.

(9) Costs incurred in acquiring a road vehicle, other than a commercial vehicle, are treated as incurred in two portions as follows:

(a) a portion not exceeding SY 40,000 at the time of acquisition; and

(b) a portion being the remainder of such costs immediately before the vehicle is realised.

(10) For the purposes of this paragraph, "commercial vehicle" means-

(a) a road vehicle designed to carry loads of more than half a tonne or more than thirteen passengers; or

(b) a vehicle used in a transportation or vehicle rental business.

Sec. 87. Realisation of Depreciable Assets

(1) The excess of-

(a) incomings derived by a person during a tax year for any assets that are or have been in a Class 1, 2, 3, 4, or 5 pool of depreciable assets of the person during the year; over

(b) the depreciation basis of the pool at the end of the year calculated under section 86(3) but disregarding those incomings,

is included in calculating the person's income for that year from the business or investment in which the assets are or were used.

(2) Where the assets in a pool of depreciable assets of a person are all realised by the person before the end of a tax year, the pool is dissolved and-

(a) an amount is included in calculating the person's income for that year from the business or investment in which the assets were used in

respect of excess depreciation of the depreciable assets that have been in the pool calculated in accordance with the following formula:

$$A - B$$

or

(b) an allowance is granted to the person for the tax year in respect of depreciation of the depreciable assets that have been in the pool calculated in accordance with the following formula:

$$B - A$$

where-

A is the person's incomings derived during the tax year, or to be derived, for the assets; and

B is the sum of-

(i) the written down value of the pool at the end of the previous tax year; and

(ii) outgoings added to the depreciation basis of the pool during the tax year or to be added during the following tax year under section 86(5).

(3) For the purposes of subsection (2), a person realises an asset of the type referred to in section 85(3) only at the later of the following times:

(a) when the person ceases to conduct natural resource prospecting, exploration, development, and production in the country where the prospecting, exploration, or development giving rise to the asset occurred; or

(b) two years prior to the time at which the person and all associates of the person cease to conduct natural resource prospecting, exploration, development, and production in that country.

(4) For the purposes of this section, "written down value" of a pool of depreciable assets at the end of a tax year means-

(a) in the case of a Class 1, 2, 3, 4, or 5 pool, the depreciation basis of the pool at the end of the year, if any, after deducting depreciation for that pool calculated under section 86(2) and (7) for that year; or

(b) in the case of a Class 6 or 7 pool, the depreciation basis of the pool at the end of the year reduced by all allowances granted to the person under section 86(1) for that year and any previous tax year in respect of the pool.

Subdivision C: Special Rules

Sec. 90. Realisation with Retention of Asset or Liability

(1) Subject to this section, where a person realises an asset in any of the manners described in section 82(1)(d) to (h)-

(a) the person is treated as deriving an amount in respect of the realisation equal to the market value of the asset at the time of the realisation; and

(b) the person is treated as incurring costs of an equal amount in the acquisition of the asset consequent on the realisation.

(2) Where a person realises an asset, being a business asset, an investment asset, or trading stock, in the manner described in section 82(1)(e) and immediately after the realisation the asset is a business asset, depreciable asset, investment asset, or trading stock of the person-

(a) the person is treated as deriving an amount in respect of the realisation equal to the net outgoings for the asset immediately before the realisation; and

(b) the person is treated as incurring costs of an equal amount in the acquisition of the asset consequent on the realisation.

(3) Where a person realises all the assets in a pool of the person's depreciable assets at

the same time and in the manner described in section 82(1)(e), and immediately after the realisation each asset realised is a business asset, depreciable asset, investment asset, or trading stock of the person-

(a) the person is treated as deriving an amount in respect of the realisation equal to the written down value of the pool at the time of realisation; and

(b) the person is treated as incurring costs of an equal amount in the acquisition of the assets consequent on the realisation.

(4) Where a person realises a liability in any of the manners described in section 82(2)(c) to (e)-

(a) the person is treated as incurring costs for the realisation equal to the market value of the liability (quantified in a positive amount) at the time of realisation; and

(b) the person is treated as deriving an equal amount in respect of incurring the liability consequent on the realisation.

Sec. 91. Realisation by way of Instalment Sale or Finance Lease

Subject to section 94, where a person realises an asset by way of instalment sale or leasing the asset to another person under a finance lease-

(a) the person is treated as deriving an amount in respect of the realisation equal to the market value of the asset immediately before the realisation; and

(b) the person who acquires the asset is treated as incurring costs of an equal amount in acquiring the asset.

Sec. 92. Transfer of Asset or Liability to Spouse or Former Spouse

(1) Where as part of a divorce settlement or bona fide separation agreement an individual realises an asset by way of transfer of ownership of the asset to a spouse or former spouse and an election for this subsection to apply is made by the spouse or former spouse in writing-

(a) the person is treated as deriving an amount in respect of the realisation equal to the net outgoings for the asset immediately before the realisation; and

(b) the spouse or former spouse is treated as incurring costs of an equal amount in acquiring the asset.

(2) Where as part of a divorce settlement or bona fide separation agreement an individual realises a liability by way of transfer of the liability to a spouse or former spouse and an election for this subsection to apply is made by the spouse or former spouse in writing-

(a) the person is treated as incurring costs for the realisation equal to the net incomings for the liability immediately before the realisation; and

(b) the spouse or former spouse is treated as deriving an equal amount in respect of incurring the liability.

Sec. 93. Transfer of Asset or Liability on Death

(1) Subject to section 92, where an individual realises an asset on death by way of transfer of ownership of the asset to another person-

(a) the individual is treated as deriving an amount in respect of the realization equal to the market value of the asset at the time of realisation; and

(b) the person who acquires ownership of the asset is treated as incurring costs of an equal amount in the acquisition.

(2) Subject to section 92, where an individual realises a liability on death by way of transfer of the liability to another person-

(a) the individual is treated as incurring costs for the realisation equal to the market value of the liability (quantified in a positive amount) at the time of realisation; and

(b) the person who incurs the liability is treated as deriving an equal amount in respect of incurring the liability.

Sec. 94. Transfer of Asset or Liability to an Associate or for No Consideration

(1) Subject to this section and sections 92 and 93, where a person realises an asset by way of transfer of ownership of the asset to an associate of the person or to any other person for no consideration-

(a) the person is treated as deriving an amount in respect of the realisation equal to the greater of the market value of the asset or the net outgoings for the asset immediately before the realisation; and

(b) the person who acquires ownership of the asset is treated as incurring costs of an equal amount in the acquisition.

(2) Subject to subsection (6), where a person realises an asset, being a business asset, an investment asset, or trading stock, by way of transfer of ownership of the asset to an associate of the person and the requirements of subsection (7) are met-

(a) the person is treated as deriving an amount in respect of the realisation equal to the net outgoings for the asset immediately before the realisation; and

(b) the associate is treated as incurring costs of an equal amount in acquiring the asset.

(3) Subject to subsection (6), where a person realises all the assets in a pool of the person's depreciable assets at the same time by way of transfer of ownership of the assets to an associate of the person and the requirements of subsection (7) are met-

(a) the person is treated as deriving an amount in respect of the realisation equal to the written down value of the pool immediately before the realisation; and

(b) the associate is treated as incurring costs of an equal amount in acquiring the assets.

(4) Subject to this section and sections 92 and 93, where a person realises a liability by way of transfer of the liability to an associate of the person or to any other person for no consideration-

(a) the person is treated as incurring costs for the realisation equal to the lesser of the market value of the liability (quantified in a positive amount) or the net incomings for the liability immediately before the realisation; and

(b) the person who incurs the liability is treated as deriving an equal amount in respect of incurring the liability.

(5) Subject to subsection (6), where a person realises a liability that was incurred in the production of income from a business or investment of the person by way of transfer of the liability to an associate of the person and the requirements of subsection (7) are met-

(a) the person is treated as incurring costs for the realisation equal to the net incomings for the liability immediately before the realisation; and

(b) the associate is treated as deriving an equal amount in respect of incurring the liability.

(6) The Commissioner may only exercise power under section 62 with respect to a transfer referred to in subsections (2), (3), or (5) where the transfer is part of a "tax avoidance arrangement" within the meaning of that phrase in section 69.

(7) The requirements specified in subsections (2), (3) and (5) are:

(a) either the person or the associate is an entity;

(b) in the case of subsections (2) and (3), the asset or assets are business assets, depreciable assets, investment assets, or trading stock of the associate immediately after transfer by the person;

(c) in the case of subsection (5), the liability is incurred by the associate in the production of income from a business or investment of the associate;

(d) at the time of the transfer-

(i) the person and the associate are residents; and

(ii) the associate or, in the case of an associate partnership or trust, none of its partners or beneficiaries are exempt from income tax;

(e) there is continuity of underlying ownership in the asset or underlying obligation of the liability, as the case requires, of at least 50 percent; and

(f) an election for subsection (2), (3), or (5), as the case requires, to apply is made by both the person and the associate in writing.

(8) For the purposes of this section, a transfer to an associate includes a transfer through an arrangement with one or more third persons.

Sec. 95. Creation and Cancellation of a Common Asset and Liability by Associates

(1) Where an asset is created in a person that constitutes a liability of an associate-

(a) the person is treated as incurring costs in acquiring the asset equal to the market value of the asset immediately after the creation; and

(b) the associate is treated as deriving an equal amount in respect of incurring the liability.

(2) Where an asset owned by a person that constitutes a liability of an associate is realised in such a manner that the asset and the liability cease to exist as a result of the realisation-

(a) the person is treated as deriving an amount in respect of the realisation equal to the market value of the asset immediately before the realisation; and

(b) the associate is treated as incurring costs for the realisation equal to the market value of the liability (quantified in a positive amount) immediately before the realisation.

(3) For the purposes of determining whether an asset created in or owned by a person constitutes a liability of an associate, any interposed arrangement with one or more third persons shall be ignored.

Sec. 96. Involuntary Realisation of Asset or Liability with Replacement

(1) Subject to subsection (3), this subsection applies where a person-

(a) involuntarily realises an asset in any of the manners described in section 82(1)(a);

(b) acquires ownership of a replacement asset of the same type within one year of the realisation; and

(c) elects in writing for this subsection to apply.

(2) Where subsection (1) applies, the person is treated as-

(a) deriving an amount in respect of the realisation equal to-

(i) the net outgoings for the asset immediately before the realisation; plus

(ii) the amount, if any, by which amounts derived in respect of the realisation exceed costs incurred in acquiring the replacement asset (calculated ignoring this section); and

(b) incurring costs in acquiring the replacement asset equal to-

(i) the amount referred to in paragraph (a)(i); plus

(ii) the amount, if any, by which costs incurred in acquiring the replacement asset exceed amounts derived in respect of the realization (calculated ignoring this section).

(3) This subsection applies where a person-

(a) involuntarily realises all the assets in a pool of the person's depreciable assets at the same time in any of the manners

described in section 82(1)(a);

(b) acquires ownership of replacement assets of the same type within one year of the realisation; and

(c) elects in writing for this subsection to apply.

(4) Where subsection (3) applies, the person is treated as-

(a) deriving an amount in respect of the realisation equal to-

(i) the written down value of the pool immediately before the realisation; plus

(ii) the amount, if any, by which amounts derived in respect of the realisation exceed the costs incurred in acquiring the replacement assets (calculated ignoring this section); and

(b) incurring costs in acquiring the replacement assets equal to-

(i) the amount referred to in paragraph (a)(i); plus

(ii) the amount, if any, by which costs incurred in acquiring the replacement assets exceed amounts derived in respect of the realization (calculated ignoring this section).

(5) This subsection applies where a person-

(a) involuntarily realises a liability in any of the manners described in section 82(2)(a);

(b) incurs a replacement liability of the same type within one year of the realisation; and

(c) elects for this subsection to apply.

(6) Where subsection (5) applies, the person is treated as-

(a) incurring costs for the realisation equal to- less

(i) the net incomings for the liability immediately before the realisation;

(ii) the amount, if any, by which costs incurred for the realisation exceed amounts derived in respect of incurring the replacement liability (calculated ignoring this section); and

(b) deriving an amount in respect of incurring the replacement liability equal to-

(i) the amount referred to in paragraph (a)(i); plus

(ii) the amount, if any, by which amounts derived in respect of incurring the replacement liability exceed costs incurred for the realisation (calculated ignoring this section).

(7) The regulations may prescribe the circumstances in which the replacement of one security in an entity with another security in an entity as a result of conversion of the security or reconstruction of the entity constitutes an involuntary realisation.

Sec. 97. Realisation of Assets and Liabilities by Combination

(1) Subject to subsection (2), where a person acquires an asset or incurs a liability (the "combined asset or liability") and as a result another asset owned or liability owed by the person is realised by way of expiry or combination (the "merging asset or liability"), then-

(a) where there are net outgoings for the merging asset or liability immediately before its realisation, the person is treated as-

(i) deriving an amount in respect of the realisation of the merging asset or liability equal to the net outgoings but, in the case of a combined liability, not exceeding amounts derived by the person with respect to incurring the liability; and

(ii) incurring costs of an equal amount in owning or owing the combined asset or liability;

(b) where there are net incomings for a merging liability immediately before its realisation, the person is treated as-

(i) incurring costs for the realisation of the merging liability in an amount equal to the net incomings but, in the case of a combined asset, not exceeding costs incurred by the person in acquiring the asset; and

(ii) deriving an equal amount in owning or owing the combined asset or liability.

(2) Without limiting the generality of subsection (1), the circumstances in which that subsection applies include the exercise of an option by the person to acquire or sell an asset, the acquisition of an asset that is leased by the person, and the transfer of a liability that is guaranteed by the person.

Sec. 98. Realisation of Assets and Liabilities by Separation

Subject to section 77(4), where rights or obligations with respect to an asset owned or liability owed by one person are created in another person, including by way of lease of an asset or part thereof, then-

(a) where the rights or obligations are permanent, the one person is treated as realising part of the asset or liability but is not treated as acquiring any new asset or liability; and

(b) where the rights or obligations are temporary or contingent, the one person is not treated as realising part of the asset or liability but as acquiring a new asset or liability, as the case requires.

Sec. 99. Apportionment of Outgoings and Incomings

(1) The purpose of this section is to apportion outgoings and incomings over more than one asset or liability according to their market values in the circumstances referred to in subsections (2) to (4).

(2) Subject to sections 92 and 94-

(a) where a person acquires one or more assets or incurs one or more liabilities by way of transfer at the same time or as part of the same arrangement; then

(b) the amounts calculated under subsections (5) or (6) are treated as the costs incurred in the acquisition of each asset or the amounts derived in respect of incurring each liability, as the case requires.

(3) Subject to sections 92 and 94-

(a) where a person realises one or more assets or liabilities by way of transfer at the same time or as part of the same arrangement; then

(b) the amounts calculated under subsections (5) or (6) are treated as the amounts derived in respect of the realisation or the costs incurred for the realisation of each asset or liability, as the case requires.

(4) Where a person who owns an asset or liability realises part of it, whether, in either case, the part realised is an asset or liability, then the amounts calculated under subsections (5) or (6) are treated as-

(a) net outgoings for the part of the asset or liability realised and the part not realised to the time of realisation; and

(b) net incomings for the part of the asset or liability realised and the part not realised to the time of realisation, as the case requires.

(5) Where there is excess value in the circumstances described in subsection (2), (3), or (4), then-

(a) the costs incurred in acquiring, the

amounts derived in respect of realisation, or the net outgoings for the asset or liability, as the case requires, are calculated using the following formula:

$$A - B$$

and if **B** exceeds **A**, the excess is treated as amounts derived in owning or owing,

costs incurred for realisation of, or net incomings for the asset or liability, as the case requires; or

(b) the amounts derived in respect of incurring, the costs incurred for realization of, or the net incomings for the asset or liability, as the case requires, are calculated using the following formula:

$$A + B$$

(6) Where there is inadequate value in the circumstances described in subsection (2), (3), or (4), then-

(a) the costs incurred in acquiring, the amounts derived in respect of realization of, or the net outgoings for the asset or liability, as the case requires, are calculated using the following formula:

$$A + B$$

or

(b) the amounts derived in respect of incurring, the costs incurred for realization of, or the net incomings for the asset or liability, as the case requires, are calculated using the following formula:

$$A - B$$

and if **B** exceeds **A**, the excess is treated as costs incurred in owning or owing, amounts derived in respect of realisation of, or net outgoings for the asset or liability, as the case requires.

(7) For the purposes of this section, unless otherwise stated, all amounts and values are determined at the time of acquisition, incurring, or realisation, as the case requires.

(8) For the purposes of this section-

"**A**" means-

(a) in the case of an asset with a positive market value or a liability with a negative market value, that value quantified in a positive amount; or

(b) in the case of an asset with a negative market value or a liability with a positive market value, that value quantified in a negative amount;

"**B**" means-

$$C / D \times E$$

where-

C is the market value of the asset or liability, as the case requires, quantified in a positive amount;

D is the sum of-

(a) in a case referred to in subsection (2) or (3), the market values of all assets and liabilities, as the case requires, quantified in positive amounts; and

(b) in a case referred to in subsection (4), the market value of the part of the asset or liability realised and the market value of the part of the asset or liability not realised, quantified in positive amounts; and

E is the excess value or inadequate value, as the case requires.

"excess value"-

(a) in a case referred to in subsection (2), means the amount, if any, by which-

(i) the market value of any assets acquired plus any

net amounts derived in respect of the acquisitions and incurring; exceed

(ii) the market value of any liabilities incurred (quantified in a positive amount) plus any net amount of costs incurred in the acquisitions and incurring;

(b) in a case referred to in subsection (3), means the amount, if any, by which-

(i) the positive market value of any assets or liabilities realised plus any net amount of costs incurred for the realisations; exceed

(ii) the negative market value of any assets or liabilities realized (quantified in a positive amount) plus any net amount derived in respect of the realisations; and

(c) in a case referred to in subsection (4), means-

(i) where the asset or liability has a positive market value immediately before the realisation, the amount, if any, by which-

(a) that market value plus any net incomings for the asset or liability; exceed

(b) any net outgoings for the asset or liability at that time; and

(ii) where the asset or liability has a negative market value immediately before the realisation, the amount, if any, by which-

(a) any net incomings for the asset or liability at that time; exceed

(b) that market value (quantified in a positive amount);

"inadequate value"-

(a) in a case referred to in subsection (2), means the amount, if any, by which-

(i) the market value of any liabilities incurred (quantified in a positive amount) plus any net amount of costs incurred in the acquisitions and incurring; exceed

(ii) the market value of any assets acquired plus any net amounts derived in respect of the acquisitions and incurring;

(b) in a case referred to in subsection (3), means the amount, if any, by which-

(i) the negative market value of any asset or liabilities realised (quantified in a positive amount) plus any net amount derived in respect of the realisations; exceed

(ii) the positive market value of any assets or liabilities realised plus any net amount of costs incurred for the realisations; and

(c) in a case referred to in subsection (4), means-

(i) where the asset or liability has a positive market value immediately before the realisation, the amount, if any, by which-

(a) any net outgoings for the asset or liability at that time; exceed

(b) that market value; and

(ii) where the asset or liability has a negative

market value immediately before the realisation, the amount, if any, by which-

(a) that market value (quantified in a positive amount) plus any net outgoings for the asset or liability; exceed

(b) any net incomings for the asset or liability at that time.

PART III: RULES GOVERNING TYPES OF PERSONS

Division I: Central Concepts

Sec. 105. Persons

(1) The following two types of persons are recognised for the purposes of this Act:

(a) individuals, which include incapacitated individuals and minors; and

(b) entities, being partnerships, trusts and companies (including controlled foreign trusts and companies), and foreign branches (including foreigner's Symmetrican branches).

(2) For the purposes of this section-

"company"-

(a) means-

(i) any body corporate;

(ii) unincorporated association; or

(iii) other body of persons, other than a partnership or trust; and

(b) includes-

(i) a friendly, pension, provident, retirement, superannuation, or similar fund or society;

(ii) a government, a political subdivision of a government, or a public international organisation; and

(iii) a limited partnership or a unit trust;

"controlled foreign trust" and "controlled foreign company" mean a non-resident trust or company-

(a) in which a resident person owns an interest, directly or indirectly through one or more interposed non-resident entities; and

(b) where the person is associated with the trust or company or would be if the person and not more than four other resident persons were associated;

"foreign branch" means a permanent establishment of an individual, partnership, trust, or company that is not situated in the country in which the individual, partnership, trust, or company is resident and includes a foreigner's Symmetrican branch;

"foreigner's Symmetrican branch" means a permanent establishment of a non-resident individual, partnership, trust, or company situated in Symmetrica and is interpreted in light of section 122(5);

"incapacitated individual" means an individual who, by reason of mental illness or insanity, is incapable of managing their affairs;

"limited partnership" means-

(a) any association of 20 or more individuals or bodies corporate carrying on business jointly (whether in their own capacity, in the capacity of trustee, or through a foreign branch), irrespective of whether the association is recorded in writing; and

(b) where, under a law in force in Symmetrica or the country in which the association is organised, at least 20 of the individuals or bodies corporate have limited liability for the debts of the association;

"minor" with respect to a tax year means an individual under the age of eighteen years at the end of the tax year;

"partnership"-

(a) means any association of individuals or bodies corporate carrying on business jointly (whether in their own capacity, in the capacity of trustee, or through a foreign branch), irrespective of whether the association is recorded in writing; and

(b) excludes an entity of the type referred to in paragraph (b) of the

definition of "company";

"public international organisation" means an organisation listed as such in the regulations;

"trust"-

(a) means an arrangement under which a trustee holds assets; and

(b) excludes a partnership, a body corporate, or an entity of the type referred to in paragraph (b) of the definition of "company"; and

"unit trust" means-

(a) an arrangement under which a trustee holds assets for the benefit of at least 20 persons; and

(b) where the entitlements of the persons to participate in the income or contributed capital of the arrangement are divided into units such that the entitlements are determined by the number of units owned.

Sec. 106. Definitions Relating to Beneficiaries, Managers, and Interests in Entities

For the purposes of this Act-

"beneficiary" in relation to an entity means any person who owns an interest in an entity;

"interest" in an entity means a right, including a contingent right and whether of a legal or equitable nature, to participate in any income or contributed capital of the entity;

"manager" in relation to an entity-

(a) means any councillor, director, manager, member, officer, or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity; and

(b) includes a partner of a partnership, a trustee of a trust, and the owner of a foreign branch;

"partner" means a person who is a beneficiary of a partnership;

"shareholder" means a person who is a beneficiary of a company; and

"trustee"-

(a) means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law and whether or not-

(i) the assets are held alone or jointly with other individuals or bodies corporate; or

(ii) the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court, or by other operation of the law; and

(b) includes-

(i) any executor, administrator, tutor, or curator;

(ii) any liquidator, receiver, trustee in bankruptcy, or judicial manager;

(iii) any person having the administration or control of assets subject to a usufruct, fideicommissum, or other limited interest;

(iv) any person who manages the assets of an incapacitated individual; and

(v) any person who manages assets under a private foundation or other similar arrangement.

Sec. 107. Associated Persons

(1) Two persons are associates of each other where the relationship between the two is such that one may reasonably be expected to act, other than as employee, in accordance with the intentions of the other.

(2) Without limiting the generality of subsection (1), the following are associates of each other:

(a) an individual and a relative of the individual, unless the Commissioner is satisfied that it is not reasonable to expect

that either individual will act in accordance with the intentions of the other;

(b) two persons who are partners in the same partnership, unless the Commissioner is satisfied that it is not reasonable to expect that either person will act in accordance with the intentions of the other;

(c) a foreign branch and its owner; and

(d) an entity and-

(i) a person who-

(a) either alone or together with an associate or associates under another application of this section; and

(b) whether directly or through one or more interposed entities, controls or may benefit from 50 percent or more of the rights to income or contributed capital or voting power of the entity; or

(ii) a person who, under another application of this section, is an associate of a person to whom subparagraph (i) applies.

(3) For the purposes of this section, two individuals are related if one is a spouse, parent, grandparent, sibling, aunt, uncle, or first cousin of the other, including by way of marriage or adoption.

Sec. 108. Resident and Non-Resident Persons

(1) For the purposes of this Act, each person is either a resident person or a non-resident person.

(2) A person is a resident person-

(a) in the case of an individual, for a tax year or part of a tax year during which the individual is a resident individual; and

(b) in the case of an entity, for a tax year during which the entity is a resident partnership, resident trust, resident company, or foreigner's Symmetrican branch.

(3) A person is a non-resident person for a tax year or part of a tax year during which the person is not a resident person.

(4) For any period during which a person is a non-resident, the person is treated as a resident of only one foreign country determined-

(a) in the case of an individual, by applying section 109(1)(a), (b), and (c) in order as though a reference to Symmetrica were a reference to a particular foreign country; and

(b) in the case of a partnership, trust, company, or foreign branch, as the country in which the entity predominantly carries out its activities.

Sec. 109. Resident and Temporarily Resident Individuals

(1) An individual is resident in Symmetrica during a tax year if the individual-

(a) has a normal place of abode in Symmetrica and is present in Symmetrica during the tax year;

(b) is present in Symmetrica on more than 182 days in any period of 365 consecutive days of which 183 days fall within the tax year; or

(c) is an employee or an official of the Government of Symmetrica posted abroad during the tax year.

(2) Subject to subsections (3) and (4), an individual who is resident in Symmetrica during a tax year is treated as resident for the whole of the tax year.

(3) An individual who was not resident during the previous tax year is treated as-

(a) not resident for that part of a tax year before the day the individual is first present in

Symmetrica during the tax year; and

(b) resident for the remaining part of the tax year.

(4) An individual who is not resident during the following tax year is treated as-

(a) resident for that part of a tax year on and before the last day on which the individual is present in Symmetrica during the tax year; and

(b) not resident for the remaining part of the tax year if during that remainder the individual has closer economic connections to a foreign country than to Symmetrica.

(5) For the purposes of subsection (1)(a) and (b), an individual is treated as not present in Symmetrica on a day when-

(a) the individual enters Symmetrica;

(b) the individual is in transit between two points outside Symmetrica; or

(c) the individual is present in Symmetrica by reason of diplomatic status, or is a dependant of such an individual.

(6) An individual is temporarily resident in Symmetrica for the part of a tax year during which the individual is resident in Symmetrica if the individual-

(a) is not a citizen of or domiciled in Symmetrica during the tax year;

(b) does not intend, during the tax year, to reside in Symmetrica for a total period of more than four years;

(c) has been resident in Symmetrica during less than four previous tax years; and

(d) has been granted temporary residence status by the Director of Immigration for that part of the tax year.

Sec. 110. Resident Entities

(1) A partnership is a resident partnership for a tax year if at any time during the year a partner is a resident of Symmetrica.

(2) A trust is a resident trust for a tax year if-

(a) it was established in Symmetrica;

(b) at any time during the tax year, a trustee of the trust is a resident person; or

(c) at any time during the tax year a resident person directs or may direct senior managerial decisions of the trust, whether the direction is or may be made-

(i) alone or jointly with other persons; or

(ii) directly or through one or more interposed entities.

(3) A company is a resident company for a tax year if-

(a) it is incorporated or formed under the laws of Symmetrica; or

(b) at any time during the tax year its centre of management and control is in Symmetrica.

(4) A foreigner's Symmetrican branch is a resident person.

Division II: Rules Applicable to Particular Types of Persons

Subdivision A: Individuals

Sec. 115. Personal Offsets

(1) Subject to this section, an individual who is a resident person during a tax year may claim for the year-

(a) a personal offset of SY 1,000; and

(b) an additional personal offset of SY 250 for each dependant of the individual who is a resident person during the year but not exceeding SY 1000 in total for all dependants.

(2) If the taxable income of a dependant in respect of whom an additional personal offset is claimed exceeds SY 250 for a tax year, the SY 250 offset in respect of the dependant for the year is reduced by the amount of the excess.

(3) Where an individual is a dependant of more than one relative, the additional personal offset in respect of the individual, as reduced by subsections (2) and (5), is apportioned equally between the relatives, unless they otherwise agree in writing.

(4) Subject to subsection (5), an individual

who is a temporarily resident individual during a tax year may claim for the year an additional personal offset calculated as-

(a) the income tax rates referred to in section 5(1) applied to the individual's foreign source income included in calculating the individual's assessable income for the year; less

(b) any personal offsets available under subsection (1), as reduced by the rest of this section.

(5) Where by virtue of section 109(3) or (4)-

(a) an individual is resident for part of a tax year only-

(i) the personal offsets that may be claimed under subsection (1) are reduced; and

(ii) in calculating the personal offset granted under subsection (4) the rates referred to in section 5(1) are amended to reduce the thresholds referred to therein, in proportion to the part of the year for which the individual is resident; or

(b) a dependant is resident for part of a tax year only, the additional personal offset that may be claimed by an individual in respect of the dependant, as reduced by subsection (2), is reduced in proportion to the part of the year for which the dependant is resident.

Sec. 116. Medical Costs Offset

(1) An individual may claim a medical costs offset for a tax year for any approved medical costs paid by the individual during the year while the individual is resident, in respect of-

(a) the individual; or

(b) a dependant of the individual who is resident at the time the costs are incurred.

(2) Subject to subsection (3), the medical costs offset of an individual for a tax year is calculated by applying the rate of 35 percent to the amount of approved medical costs referred to in subsection (1) for the year and adding to the result any amount referred to in subsection (4).

(3) The medical costs offset claimed by an individual for any tax year shall not exceed the reasonable medical insurance premium limit set out in the regulations.

(4) To the extent to which, for any individual for any tax year-

(a) the amount referred to in subsection (2) exceeds the limit referred to in subsection (3); or

(b) the medical costs offset claimed by the individual exceeds income tax payable by the individual under section 1(1)(a) for the year (calculated under section 1(3) without a reduction for the medical costs offset or any foreign tax offsets), the sum of any excess under paragraphs (a) and (b) may be carried forward and added to the amount referred to in subsection (2) for the next tax year.

(5) For the purposes of this section, "approved medical costs" means medical costs approved by the regulations.

Sec. 117. Taxable Investment Income of Resident Minor

(1) Subject to subsection (2), the taxable investment income of a resident minor for a tax year is the total of the individual's assessable income for the year from each investment but not exceeding the individual's taxable income for the year.

(2) Where an incapacitated individual is a resident minor, the individual's income from a trust established by reason of the individual's incapacity is not included in calculating the individual's taxable investment income.

Subdivision B: Partnerships

Sec. 120. Principles of Taxation

(1) Notwithstanding section 1 but subject to the rest of this Act, a partnership is not liable to pay income tax with respect to its taxable income and is not entitled to any

tax credit or offset with respect to that income.

(2) Partnership income or a partnership loss of a partnership is allocated to the partners in accordance with this Division.

(3) Amounts derived and costs incurred by partners in common are treated as derived or incurred by the partnership and not the partners.

(4) Assets owned and liabilities owed by partners in common are treated as owned or owed by the partnership and not the partners.

(5) To the extent that it is not so treated by section 133, 148, or 157, foreign income tax paid with respect to partnership income, whether paid by the partnership or the partners, is treated as paid by the partnership.

(6) Subject to Division II of Part II, arrangements between a partnership and its partners are recognised.

Sec. 121. Partnership Income or Loss

(1) Partnership income from a business of a resident or non-resident partnership for a tax year of the partnership is the assessable income of the partnership for the year from the business calculated as if the partnership were a resident partnership and ignoring section 33.

(2) A partnership loss from a business of a resident or non-resident partnership for a tax year of the partnership is the loss of the partnership for the year from the business calculated under section 33(8).

Sec. 122. Taxation of Partners

(1) For the purposes of calculating a partner's income from a partnership for a tax year of the partner-

(a) there shall be-

(i) included the partner's share of partnership income; and

(ii) deducted the partner's share of a partnership loss, from any business of the partnership for a tax year of the partnership ending on the last day of, or during the tax year of the partner;

(b) subject to paragraph (a), distributions by the partnership shall not be included; and

(c) subject to section 120(3) and (4), other deductions may be made as allowed by Part II.

(2) Partnership income or a partnership loss allocated to partners under subsection (1)(a)-

(a) retains its character as to type and source;

(b) is treated as an amount derived or cost incurred, respectively, by a partner at the end of the partnership's tax year; and

(c) is allocated to the partners proportionately to each partner's share, unless the Commissioner, by notice in writing, permits otherwise.

(3) At the time partnership income is treated as derived by partners under subsection (2)(b), the partners are allocated, proportionately to each partner's share, any income tax under this Act or foreign income tax-

(a) paid by the partnership with respect to the income; or

(b) treated as paid by the partnership with respect to the income by reason of section 120, 133, 148, or 157.

(4) A partner is treated as having paid the tax allocated to the partner by subsection (3) at the time of allocation and-

(a) in the case of foreign income tax, foreign tax offsets may be available to the partner but no tax credit is available to the partner; and

(b) in the case of income tax paid under this Act (that is not treated as foreign income tax by section 175), a tax credit is available to the partner under section 223 as though the tax were withheld from a payment to the partner.

(5) Notwithstanding the rest of this section,

where a non-resident person is a partner in a resident partnership-

(a) the partner is treated as having a foreigner's Symmetrican branch but the partner's interest in that branch and the partner's interest in the partnership are treated as the same asset;

(b) any allocation of-

(i) partnership income or a partnership loss with a source in Symmetrica (that is not treated as having a foreign source by section 175); or

(ii) income tax paid under this Act referred to in subsection (4)(b), shall be made to the branch and not the partner;

(c) with respect to any allocation referred to in paragraph (b), the branch and the partner are subject to the treatment provided by this Act and, in particular, Subdivision E; and

(d) any distribution by the partnership to the partner out of income referred to in paragraph (b)(i) is treated as a distribution by the branch to the partner only.

(6) For the purposes of this section, a "partner's share" is-

(a) subject to paragraph (b), equal to the partner's percentage interest in any income of the partnership as set out in the partnership arrangement; or

(b) where the allocation of income in the partnership arrangement does not reflect the contribution of the partners to the partnership's business, equal to the partner's percentage interest in the contributed capital of the partnership.

Sec. 123. Outgoings and Incomings for Partner's Interest in Partnership

(1) There is included in the outgoings for a partner's interest in a partnership, unless the amounts are included by section 80-

(a) amounts included in calculating the partner's income under section 122(1)(a)(i) at the time of that inclusion; and

(b) the partner's share of exempt amounts and final withholding payments derived by the partnership at the time the amount or payment is derived.

(2) There is included in the incomings for a partner's interest in a partnership, unless the amounts are included by section 81-

(a) amounts deducted in calculating the partner's income under section 122(1)(a)(ii) at the time of deduction;

(b) distributions made by the partnership to the partner at the time of distribution; and

(c) subject to paragraphs (a) and (b), the partner's share of costs incurred by the partnership that are not-

(i) deductible for the partnership under Subdivision D of Division I of Part II; or

(ii) included as an outgoing for an asset or liability of the partnership, at the time the cost is incurred.

Subdivision C: Trusts

Sec. 130. Principles of Taxation

(1) A trust is liable to tax separately from its beneficiaries.

(2) The attributable income of a trust may be allocated and taxed to the trust's beneficiaries in the circumstances outlined in section 133.

(3) Separate calculations of the taxable income of a trust shall be made for separate trusts regardless of whether they have the same trustees.

(4) Amounts derived and costs incurred by a trust or a trustee in the capacity of trustee (other than as a bare agent), whether or not derived or incurred on behalf of another person and whether or not any other person is entitled to such an amount or income constituted by such an amount, is treated as derived or incurred by the trust and not any other person.

(5) Assets owned and liabilities owed by a trust or a trustee in the capacity of trustee (other than as a bare agent) are treated as owned or owed by the trust and not any other person.

(6) To the extent that it is not so treated by section 122, 133, 148, or 157, foreign income tax paid with respect to the income of a trust, whether paid by a trustee, a beneficiary, or the trust, is treated as paid by the trust.

(7) Subject to Division II of Part II, arrangements between a trust and its trustees or beneficiaries are recognised.

Sec. 131. Attributable Income of Trust

(1) The attributable income for a tax year of a resident or non-resident trust is the taxable income of the trust for the year calculated as if the trust were a resident trust and determined without regard to section 132(1).

(2) Losses of a trust for a tax year are not allocated to the beneficiaries of the trust, but are carried over and taken into account in calculating the taxable income and attributable income of the trust in subsequent tax years of the trust in accordance with section 33.

Sec. 132. Deduction for Amounts Allocated to Beneficiary

(1) Subject to this Act, where and to the extent that an ascertained resident beneficiary of a trust-

(a) acquires a vested right to an amount of or included in calculating the attributable income of the trust during the tax year of the trust in which the amount constitutes or is included in calculating the attributable income; and

(b) has the same tax year as the trust, the amount shall be deducted in calculating the income of the trust for the year.

(2) Subsection (1) applies irrespective of whether the beneficiary acquires the vested right as a result of the exercise by a trustee of a discretion vested in the trustee or the happening of some other contingent event.

Sec. 133. Taxation of Beneficiaries

(1) For the purposes of calculating a beneficiary's income from a trust for a tax year-

(a) distributions by the trust shall not be included, otherwise than as provided for by subsections (2) and (3); and

(b) deductions may be made as allowed by Part II but subject to section 130(4) and (5).

(2) For the purposes of calculating a beneficiary's income from a trust for a tax year of the beneficiary, there shall be included any amount of or included in calculating the attributable income of the trust for a tax year of the trust ending within the tax year of the beneficiary-

(a) to which the beneficiary has a vested right and that is deductible in ascertaining the income of the trust for the trust's tax year under section 132(1);

(b) to which the beneficiary is or has become entitled (otherwise than in the manner referred to in paragraph (a)) within 30 days of the end of the trust's tax year; or

(c) that is distributed to the beneficiary within 30 days of the end of the trust's tax year.

(3) For the purposes of calculating a beneficiary's income from a trust for a tax year of the beneficiary, there shall be included any amount of or included in calculating the attributable income of the trust for any tax year of the trust during which the trust was a non- resident trust-

(a) to which the beneficiary is or has become entitled during the beneficiary's tax year; or

(b) that is distributed to the beneficiary during the beneficiary's tax year, and that is not and has not been allocated under subsection (2).

(4) Attributable income of a trust-

(a) on allocation to beneficiaries under subsection (2)-

(i) retains its character as to type and source; and

(ii) is allocated proportionately out of each type and source of the trust's attributable income; and

(b) on allocation to beneficiaries under subsection (3), is treated as an amount derived from an investment of the beneficiary from a source in the country in which the trust is resident.

(5) An amount of attributable income allocated to a beneficiary under subsection (2) or (3), is treated as an amount derived by the beneficiary at the time it vests, the beneficiary becomes entitled to it, or it is distributed, as the case requires, but, in the case of subsection (2), not later than the end of the tax year of the trust.

(6) Subject to this Act, at the time an amount of attributable income of a trust referred to in subsection (2) is treated as derived by a beneficiary under subsection (5), the beneficiary is allocated any income tax under this Act or foreign income tax-

(a) paid by the trust with respect to the amount; or

(b) treated as paid by the trust with respect to the amount by reason of section 122, 130, 148, 157, or this section.

(7) A beneficiary is treated as having paid the tax allocated to the beneficiary by subsection (6) at the time of allocation and-

(a) in the case of foreign income tax, foreign tax offsets may be available to the beneficiary but no tax credit is available to the beneficiary; and

(b) in the case of income tax paid under this Act (that is not treated as foreign income tax by section 175), a tax credit is available to the beneficiary under section 223 as though the tax were withheld from a payment to the beneficiary.

Sec. 134. Incapacitated Individuals

For the purposes of determining whether an amount vests in a beneficiary of a trust under section 132 or whether a beneficiary of a trust is entitled to an amount under section 133, a lack of legal capacity of the beneficiary is ignored.

Sec. 135. Deceased Individuals

For the purposes of section 132 and section 133, an ascertained heir or legatee of a deceased individual is treated as having a vested interest in an amount-

(a) that consists of or is included in calculating the attributable income of the estate of the deceased; and

(b) that is derived by the executor of the estate for the immediate or future benefit of the heir or legatee.

Sec. 136. Incomings of Beneficiary's Interest in Trust

For the purposes of section 81 but subject to section 158, distributions by a trust to a beneficiary out of attributable income, exempt amounts, and final withholding payments are not incomings for the beneficiary's interest in the trust.

Subdivision D: Companies

Sec. 140. Principles of Taxation

(1) A company is liable to tax separately from its shareholders.

(2) The dividends of a company may be taxed to the company's shareholders in accordance with section 142.

(3) Amounts derived and costs incurred by a company that lacks legal capacity, whether or not derived or incurred on behalf of another person, are treated as derived or incurred by the company and not any other person.

(4) Assets owned and liabilities owed by a company that lacks legal capacity are treated as owned or owed by the company and not any other person.

(5) To the extent that it is not so treated by section 122, 133, 148, or 157, foreign income tax paid with respect to the income of a company, whether paid by a manager, a shareholder, or the company, is treated as paid by the company.

(6) Subject to Division II of Part II, arrangements between a company and its managers or shareholders are recognised.

Sec. 141. Dividends

A dividend of a company is a distribution by the company that is not a repayment of capital.

Sec. 142. Taxation of Shareholders

(1) Subject to this Act, dividends distributed by-

(a) a resident company are taxed in the hands of the company's shareholders in the form of a final withholding tax; and

(b) a non-resident company are included in calculating the income of the shareholders.

(2) Subject to subsection (3), a dividend distributed by a resident company to another resident company is exempt from income tax where the company receiving the dividend controls 25 percent or more of the voting power in the company distributing the dividend, either directly or indirectly through one or more interposed entities.

(3) Subsection (2) does not apply to a dividend distributed to-

(a) an exempt organisation; or

(b) a company by virtue of its ownership of redeemable shares in the company distributing the dividend.

Subdivision E: Foreigner's Symmetrican Branches and Other Foreign Branches

Sec. 145. Principles of Taxation

(1) Notwithstanding section 1 but subject to the rest of this Act-

(a) a foreigner's Symmetrican branch, rather than the person who owns it, is liable to pay income tax with respect to the taxable income of the branch; and

(b) the owner of a foreign branch that is not a foreigner's Symmetrican branch, rather than the branch, is liable to pay income tax with respect to the taxable income of the branch and the branch is not entitled to any tax credit or offset with respect to that income.

(2) The repatriated income of a foreigner's Symmetrican branch is taxed in the hands of the branch in accordance with section 1(1)(b).

(3) Foreign branch income of a foreign branch and a foreign branch loss of a foreign branch that is not a foreigner's Symmetrican branch are allocated to the owner of the branch in accordance with this Subdivision.

(4) Amounts derived and costs incurred by a foreign branch are treated as derived or incurred by the branch and not the person who owns the branch.

(5) Assets owned and liabilities owed by a foreign branch are treated as owned or owed by the branch and not the person who owns the branch.

(6) To the extent that it is not so treated by section 122, 133, or 157, foreign income tax paid with respect to the income of a foreign branch is treated as paid by the branch.

(7) Subject to Division II of Part II, arrangements between a foreign branch and its owner are recognised.

Sec. 146. Repatriated Income of Foreign Branch

The repatriated income of a foreign branch for a tax year is the sum of all distributions made by the branch during the year that are not a repayment of capital.

Sec. 147. Foreign Branch Income or Loss

(1) Foreign branch income from a business of a foreign branch for a tax year is the assessable income of the branch for the year from the business calculated as if the branch were a resident company and, in the case of a branch that is not a foreigner's Symmetrican branch, ignoring section 33.

(2) A foreign branch loss from a business of a foreign branch that is not a foreigner's Symmetrican branch for a tax year is the loss of the branch for the year from the business calculated under section 33(8).

Sec. 148. Taxation of Owner of Foreign Branch

(1) For the purposes of calculating the

income of an owner of a foreign branch for a tax year-

(a) there shall be-

(i) included the foreign branch income of the branch for the year but, in the case of a foreigner's Symmetrican branch, not exceeding the repatriated income of the branch for the year; or

(ii) where the branch is not a foreigner's Symmetrican branch, deducted the foreign branch loss of the branch for the year;

(b) subject to paragraph (a), distributions by the branch shall not be included; and

(c) subject to section 145(4) and (5), other deductions may be made as allowed by Part II.

(2) The foreign branch income or loss of a foreign branch allocated to the owner under subsection (1)(a)-

(a) retains its character as to type and source;

(b) is treated as an amount derived or cost incurred, respectively, by the owner at the end of the tax year; and

(c) in the case of foreign branch income of a foreigner's Symmetrican branch, is allocated proportionately out of each type and source of the income.

(3) At the time foreign branch income of a foreign branch is treated as derived by its owner under subsection (2)(b), the owner is allocated any income tax under this Act or foreign income tax-

(a) paid by the branch with respect to the income; or

(b) treated as paid by the branch with respect to the income by reason of section 122, 133, 145, or 157.

(4) For the purposes of subsection (3), income tax paid under section 1(1)(b) with respect to the repatriated income of a foreigner's Symmetrican branch for a tax year is treated as paid with respect to the branch's income for the year.

(5) An owner is treated as having paid the tax allocated to the owner by subsection (3) at the time of allocation and foreign tax offsets may be available to the owner but no tax credit is available to the owner.

Sec. 149. Outgoings and Incomings of Owner's Interest in Foreign Branch

(1) There is included in the outgoings for an owner's interest in a foreign branch, unless the amounts are included by section 80-

(a) amounts included in calculating the owner's income under section 148(1)(a)(i) at the time of that inclusion; and

(b) exempt amounts and final withholding payments derived by the branch at the time the amount or payment is derived.

(2) There is included in the incomings for an owner's interest in a foreign branch, unless the amounts are included by section 81-

(a) amounts deducted in calculating the owner's income under section 148(1)(a)(ii) at the time of deduction;

(b) distributions made by the branch to the owner at the time of distribution;

(c) subject to paragraphs (a) and (b), costs incurred by the branch that are not-

(i) deductible for the branch under Subdivision D of Division I of Part II; or

(ii) included as an outgoing for an asset or liability of the branch, at the time the cost is incurred.

Subdivision F: Controlled Foreign Trusts and Companies

Sec. 155. Principles of Taxation

(1) Controlled foreign trusts and companies and their beneficiaries are taxed in accordance with Subdivisions C and D as

modified by this Subdivision.

(2) A controlled foreign trust or company is treated as distributing its unallocated income to its beneficiaries at the end of each tax year in accordance with section 157.

Sec. 156. Unallocated Income of Controlled Foreign Trust or Company

(1) The unallocated income of a controlled foreign trust or company for a tax year is-

(a) in the case of a trust-

(i) the attributable income of the trust for the year, calculated under section 131; less

(ii) any amount of the income included in calculating the income of a beneficiary of the trust under section 133(2) (determined ignoring section 157); or

(b) in the case of a company-

(i) the attributable income of the company for the year; less

(ii) any dividends distributed by the company during the year to any of its shareholders (determined ignoring section 157).

(2) The "attributable income" of a controlled foreign company for a tax year is its taxable income for the year calculated as if the company were a resident company.

Sec. 157. Taxation of Beneficiaries of Controlled Foreign Trusts and Companies

(1) Where at the end of a tax year a trust or company is a controlled foreign trust or company, the trust or company is treated as distributing to its beneficiaries at that time its unallocated income for the year-

(a) in accordance with the beneficiaries' rights to that income on distribution, or

(b) where those rights are not reasonably certain, in such manner as the Commissioner thinks appropriate in the circumstances.

(2) A beneficiary who is treated as receiving a distribution under subsection (1) may deduct the amount treated as distributed in calculating the beneficiary's income to the extent to which-

(a) in the case of a trust, amounts are included in calculating that income under section 133(3) with respect to the tax year of the beneficiary in which the distribution is treated as made or in any future tax year of the beneficiary; or

(b) in the case of a company, dividends are received from the company in future tax years of the company, other than another distribution treated as made under subsection (1).

(3) To the extent that all distributions made by a controlled foreign company during a tax year, including as a result of subsection (1), do not exceed the company's attributable income for the year, then distributions to shareholders who are associated with the company at the time of distribution are treated as-

(a) having the same character as to type and source as the company's attributable income; and

(b) made proportionately out of each type and source of the company's attributable income.

(4) At the time an amount is treated as distributed by a controlled foreign company to an associated shareholder under subsection (3), the shareholder is allocated any income tax under this Act or foreign income tax-

(a) paid by the company with respect to the amount; or

(b) treated as paid by the company with respect to the amount, whether under section 122, 133, 140, 148, or this section.

(5) A shareholder is treated as having paid the tax allocated to the shareholder by subsection (4) at the time of allocation and foreign tax offsets may be available to the shareholder but no tax credit is

available to the shareholder.

Sec. 158. Outgoings and Incomings of Beneficiary's Interest in Controlled Foreign Trust or Company

(1) Any amount treated as distributed to a beneficiary under section 157(1) is included in the outgoings for the beneficiary's interest in the non-resident trust or company at the time of distribution.

(2) Any amount deducted by a beneficiary under section 157(2) is included in the incomings for the beneficiary's interest in the non-resident trust or company at the time of deduction.

Division III: General Provisions Applicable to Entities

Sec. 165. Distributions by Entities

(1) A distribution by an entity-

(a) means a payment made by the entity to any of its beneficiaries, in any capacity, to the extent that-

(i) the amount of the payment plus, where section 94(2), (3), or (5) applies, a reasonable allowance for any potential income tax liability transferred from the beneficiary to the entity; exceeds

(ii) the amount of any payment made by the beneficiary to the entity in return for the entity's payment plus, where section 94(2), (3), or (5) applies, a reasonable allowance for any potential income tax liability transferred from the entity to the beneficiary; and

(b) excludes a payment of the type referred to in paragraph (a) to the extent to which the payment-

(i) is included in calculating the beneficiary's income, other than by reason of being a distribution; or

(ii) consists of a final withholding payment of the type described in section 222(1)(b) or (c).

(2) Distributions by an entity to any of its beneficiaries are classified as follows:

(a) distributions of profits;

(b) repayments of capital; and

(c) distributions of collateral benefits.

(3) A distribution by an entity to a beneficiary is a distribution of profits or a repayment of capital only if it reduces the market value of the entity's assets or liabilities.

(4) Subject to subsection (5), a distribution of the kind referred to in subsection (3) is a distribution of profits to the extent that, at the time of the distribution-

(a) the market value of the entity's assets exceeds,

(b) the market value of the entity's liabilities (quantified in a positive amount) plus capital contributions to the entity, and, to the extent that such a distribution is not a distribution of profits, it is a repayment of capital.

(5) Subject to section 170, where-

(a) there is a distribution by an entity of the kind referred to in subsection (3) in respect of the realisation of an interest in the entity in any of the manners referred to in section 82(1)(a)(iii) or as a result of the entity purchasing such an interest in itself;

(b) the distribution is not and may not be reasonably calculated, in any respect, as approximately referable to the rights of beneficiaries to share in the entity's income; and

(c) after the realisation the beneficiary to whom the distribution is made is not an associate of the entity, the distribution is treated

as partly a distribution of profits by the entity and partly as a repayment of capital by the entity in the proportion that the beneficiary would be entitled to share in such distributions if the interest were realised in the course of liquidating the entity at that time.

(6) Capital contribution to an entity-

(a) means a payment of the kind referred to in section 41(1)(a) or (b) made to the entity by a beneficiary of the entity, in any capacity, including by a person for the creation or transfer of an interest in the entity, to the extent that-

(i) the amount of the payment plus, where section 94(2), (3), or (5) applies, a reasonable allowance for any potential income tax liability transferred from the entity to the beneficiary; exceeds

(ii) the amount of any payment made by the entity to the beneficiary in return for the payment of the beneficiary plus, where section 94(2), (3), or (5) applies, a reasonable allowance for any potential income tax liability transferred from the beneficiary to the entity; and

(b) excludes-

(i) a payment the type referred to in paragraph (a) to the extent to which the payment is included in calculating the entity's income or consists of an exempt amount or final withholding payment; or

(ii) a capitalisation of profits.

(7) A distribution by an entity is a distribution of a collateral benefit if it is not a distribution of profits or a repayment of capital.

(8) For the purposes of applying section 41(1) in determining whether a payment is made to or by an entity under this section, an interest in the entity is treated as though it were not an asset or a liability.

Sec. 166. Entity Treatment of Capital Contributions and Distributions

(1) Subject to section 132, for the purposes of calculating the income of an entity, distributions made by the entity are not deductible.

(2) Capital contributions to an entity are not an incoming of the entity.

(3) Distributions by an entity are not an outgoing of the entity.

Sec. 167. Distributions of Collateral Benefits

(1) Where an entity makes a distribution of a collateral benefit to a beneficiary, other than of the type referred to in subsection (2), the amount of the distribution is included in calculating the income of the entity.

(2) Where an entity having five or fewer beneficiaries all of whom are individuals makes a distribution of a collateral benefit to a beneficiary consisting of the type of payment referred to in section 41(1)(c) or (d) and-

(a) the provision of the services is not conducted by a business of the entity; or

(b) the asset available for use or the use of which is granted is not held by a business of the entity, the entity is not allowed any deductions under this Act to the extent to which they relate to the provision of the services or the holding of the asset.

Sec. 168. Asset and Liability Dealings Between Entity and Beneficiary

(1) Subject to subsection (4) and section 94, where an asset is realised by way of transfer of ownership of the asset by an entity to one of its beneficiaries or vice

versa-

(a) the transferor is treated as deriving an amount in respect of the realization equal to the market value of the asset immediately before the realisation; and

(b) the transferee is treated as incurring costs of an equal amount in the acquisition.

(2) Subject to subsection (4) and section 94, where a liability is realised by way of transfer of the liability by an entity to one of its beneficiaries or vice versa-

(a) the transferor is treated as incurring costs for the realisation equal to the market value of the liability (quantified in a positive amount) immediately before the realisation; and

(b) the transferee is treated as deriving an equal amount in respect of incurring the liability.

(3) Subject to subsection (4), section 95 applies as though an entity and its beneficiaries were associates of each other.

(4) This section does not apply to an asset or liability consisting of an interest in an entity.

Sec. 169. Creation or Transfer of Interests in Entities by Entities

(1) Subject to subsections (2) and (3), where an interest (the "new interest") in an entity is created in a person or transferred by the entity to a person, the beneficiary who acquires the new interest is treated as incurring costs in the acquisition of the new interest equal to the market value of the new interest immediately after its creation or transfer.

(2) This subsection applies where-

(a) the beneficiary referred to in subsection (1) already owns an interest in the entity at the time the new interest is created or transferred (the "old interest");

(b) the new interest is created or transferred by the entity in respect of rights held by the beneficiary under the old interest; and

(c) one of the following three circumstances exists:

(i) the new interest is part of a bonus issue of the entity whereby the entity issues interests to all existing beneficiaries in proportion to their existing interests for no consideration;

(ii) the beneficiary incurs costs in acquiring the new interest that are less than the market value of the new interest after the creation or transfer and the market value of the old interest immediately before the creation or transfer is greater than that value immediately after the creation or transfer by the same amount; or

(iii) the beneficiary incurs costs in acquiring the new interest that are more than the market value of the new interest after the creation or transfer and the market value of the old interest immediately before the creation or transfer is less than that value immediately after the creation or transfer by the same amount.

(3) Where subsection (2) applies, any net outgoings with respect to the old interest immediately before the creation or transfer and any costs incurred in acquiring the new interest (calculated ignoring paragraph (c)) shall be aggregated and the beneficiary treated as-

(a) realising the old interest and deriving an amount in respect of the realization equal to any such net outgoings;

(b) re-acquiring the old interest at the

time of the creation or transfer and incurring costs in the acquisition equal to the portion of the aggregate that the market value of the old interest bears to the market value of the new interest immediately after the creation or transfer; and

(c) incurring costs in acquiring the new interest equal to the portion of the aggregate that the market value of the new interest bears to the market value of the old interest immediately after the creation or transfer.

Sec. 170. Termination or Acquisition of Interests in Entities by Entities

(1) Subject to subsection (2), where a beneficiary of an entity who is an associate of the entity realises an interest in the entity-

(a) in any of the manners referred to in section 82(1)(a)(iii); or

(b) as a result of the entity purchasing the interest, the entity is treated as making a distribution of the kind referred to in section 165(3) to the beneficiary equal to the market value of the interest immediately before the realisation.

(2) Where an entity makes a distribution to one of its beneficiaries (determined ignoring this subsection) in the course of purchasing an interest owned by the beneficiary in the entity and the purchase is conducted in the ordinary course of business on a recognised stock exchange-

(a) notwithstanding any law to the contrary, the beneficiary is treated as realizing the interest by way of transfer and, after the realisation, the entity is treated as owning the interest in itself;

(b) the beneficiary is treated as deriving an amount in respect of the realization that is not a distribution but that is in an amount equal to the distribution;

(c) the entity is treated as immediately cancelling the interest owned in itself for an equal distribution to itself of the kind referred to in section 165(3); and

(d) the provisions of this Act apply to the entity with respect to the cancelling of the interest and the distribution referred to in paragraph (c), including section 165(5)-

(i) for the purposes of determining how much of the distribution is a distribution of profits or repayment of capital; and

(ii) as though the interest were owned by an independent person in the entity.

Sec. 171. Change in Control

(1) Where there is a change of 50 percent or more in the underlying ownership of an entity as compared with that ownership three years previously, the entity is treated as realising any assets owned by it and any liabilities owed by it immediately before the change.

(2) Where there is a change in ownership of the type referred to in subsection (1), after the change the entity is not permitted to-

(a) deduct or transfer a loss under section 33(1) that was incurred by the entity prior to the change;

(b) carry back a loss under section 33(4) or 182(3) that was incurred after the change to a tax year occurring before the change;

(c) in a case where the entity accounted for a payment in terms of section 48(5)(a) prior to the change and after that change the payment is satisfied in terms of section 48(5)(b), make the adjustments in section 48(6), (7), and (8);

(d) in a case where the entity has included an amount in terms of section 49(1) (including by way

of an adjustment under that section) prior to the change and after that change the entity-

(i) refunds the amount;

(ii) disclaims an entitlement to receive the amount;

(iii) in the case where the amount constitutes a debt claim of the entity, writes off the debt as bad; or

(iv) in the case of an adjustment under that section, incurs a cost that represents the amount, make the adjustments in section 49(3) or otherwise claim a deduction in respect of any of the events referred to in subparagraphs (i) to (iv); or

(e) carry forward or transfer foreign income tax under section 200(3) that was originally paid with respect to foreign source income derived by the entity prior to the change.

(3) Where there is a change in ownership of the type referred to in subsection (1) during the tax year of an entity, the parts of the tax year before and after the change in ownership are treated as separate tax years.

Sec. 172. Income or Dividend Stripping

(1) Where a distribution is made by an entity to an acquirer in the course of an income or dividend stripping arrangement, the arrangement is treated as though-

(a) the payment is not made by the acquirer or an associate of the acquirer but is a distribution made by the entity to the original beneficiary; and

(b) the distribution made by the entity to the acquirer is in an amount equal to the distribution less the amount of the payment.

(2) For the purposes of this section, "income or dividend stripping arrangement" means an arrangement under which-

(a) an entity has accumulated, current or expected income (the "income");

(b) a person (the "acquirer") acquires an interest in the entity and the acquirer or an associate of the acquirer makes a payment (the "payment"), whether or not in respect of the acquisition and whether or not the payment is at the time of acquisition, to another person who is or was a beneficiary in the entity (the "original beneficiary") or an associate of such another person;

(c) the payment reflects, in whole or in part, the income of the entity; and

(d) after the acquirer acquires the interest in the entity, the entity makes a distribution to the acquirer that represents, in whole or in part, the income.

Sec. 173. Direct Value Shifting

(1) This section applies where an event occurs with respect to an asset owned in or a liability owed to an entity by a person who is an associate of the entity, which event has the effect of increasing or decreasing the market value of another asset owned in or liability owed to the entity by-

(a) the person; or

(b) an associate of the person.

(2) Subject to section 169, the person or associate owning an asset referred to in subsection (1) the market value of which is reduced by the event is treated as-

(a) realising a part of the asset equal to the proportion that the reduction bears to the market value of the asset immediately before the event; and

(b) deriving an amount equal to the reduction in respect of the realisation.

(3) Where a realisation under subsection (2) produces a loss, the loss is not recognized but is treated as costs incurred, in addition to any other costs incurred or treated as incurred otherwise than by reason of this section, by the person with respect to

the event.

(4) A person or an associate owing a liability referred to in subsection (1) the market value of which is reduced by the event is treated as deriving an amount equal to the reduction in market value in respect of owing the liability.

(5) Where, after the treatment provided for in subsection (4), the person or associate has net incomings for the liability that exceed the market value of the liability immediately after the event (quantified in a positive amount), the person or associate is treated as-

(a) realising the liability and immediately re-incurring the liability at the time of the event;

(b) incurring costs for the realisation equal to the greater of the market value of the liability immediately after the event (quantified in a positive amount) and the net incomings for the liability immediately before the event; and

(c) deriving an equal amount in respect of re-incurring the liability.

(6) Subject to section 169, a person or associate owning an asset referred to in subsection (1) the market value of which is increased by the event is treated as incurring costs in owning the asset equal to the increase in value.

(7) A person or associate owing a liability referred to in subsection (1) the market value of which is increased by the event is treated as incurring costs in owing the liability equal to the increase in value.

(8) For the purposes of this section-

(a) an "event occurs" with respect to an asset or liability where the asset or liability, or part thereof, is created, incurred, varied, or realised, including where an entity issues bonus shares or other rights in the entity;

(b) "asset" owned in an entity means an asset that constitutes a liability of the entity, an interest in the entity, or a right held with respect to the entity's assets or liabilities; and

(c) "liability" owed to an entity means a liability that constitutes an asset of the entity or that is owed with respect to the entity's assets or liabilities.

Sec. 174. Indirect Value Shifting

(1) Where section 173(2) or (4) applies to an associate owning an asset or owing a liability and the associate is an entity or where an entity makes a gift to an associate-

(a) the reduction referred to in section 173(2) or (4) or the amount of the gift shall be apportioned-

(i) in accordance with the beneficiaries' rights to distributions of profits by the entity; or

(ii) where those rights are not reasonably certain, in such manner as the Commissioner thinks appropriate in the circumstances;

(b) the entity is treated as making a distribution to its beneficiaries who are associates of the entity with respect to each of their interests in the entity; and

(c) the distribution is treated as made in the form of a payment of the kind referred to in section 41(1)(a) in an amount equal to the portion of the reduction or gift attributable to the interest.

(2) Where-

(a) subsection (1) applies (the “previous application of subsection (1)”) to treat an amount as distributed by an entity (the "primary entity") to a person, including by reason of this subsection applying; and

(b) the person is also an entity (the "secondary entity"), then subsection (1) applies to the secondary entity as though the secondary entity makes a gift to an associate in an amount equal to the distribution treated as made to the secondary entity under the previous application of subsection (1).

(3) Where section 173(6) or (7) applies to an associate owning an asset or owing a liability and the associate is an entity or where an entity receives a gift from an associate-

(a) the increase referred to in section 173(6) or (7) or the amount of the gift shall be apportioned-

(i) in accordance with the beneficiaries' rights to distributions of profits by the entity; or

(ii) where those rights are not reasonably certain, in such manner as the Commissioner thinks appropriate in the circumstances;

(b) a payment being a capital contribution is treated as made to the entity by its beneficiaries who are associates of the entity with respect to each of their interests in the entity; and

(c) the payment is treated as made in an amount equal to the portion of the increase or gift attributable to the interest.

(4) Where-

(a) subsection (3) applies (the “previous application of subsection (3)”) to treat an amount as a capital contribution by a person to an entity (the "primary entity"), including by reason of this subsection applying; and

(b) the person is also an entity (the "secondary entity"), then subsection (3) applies to the secondary entity as though the secondary entity receives a gift from an associate in an amount equal to the contribution treated as made by the secondary entity under the previous application of subsection (3).

Sec. 175. Allocations To or Through Non-Residents Treated as Having a Foreign Source

(1) Notwithstanding section 68, where income or a loss with a source in Symmetrica is allocated under section 133, 148, or 157 to-

(a) a non-resident person; or

(b) any person where the income or loss was-

(i) originally derived or incurred by a non-resident person; or

(ii) previously allocated to a non-resident person under any of those sections, the income or loss is treated as having a foreign source in a particular foreign country and not having a source in Symmetrica.

(2) Notwithstanding the definition of "foreign income tax" in section 345, any income tax paid under this Act that is allocated to a person with any income referred to in subsection (1) is treated as foreign income tax paid to a particular foreign country and not income tax paid under this Act.

(3) Sec. 157(3), (4), and (5), apply to distributions by a resident company made during any tax year to a non-resident associate of the company as though-

(a) the company were a controlled foreign company; and

(b) the attributable income of the company were its taxable income for the year.

PART IV: SPECIAL INDUSTRIES AND OFFSETS

Division I: Insurance Business

Sec. 180. Types of Insurance Business

(1) The following two types of insurance business are recognised for the purposes of this Act:

(a) general insurance business; and

(b) investment insurance business.

(2) For the purposes of this section-

"general insurance" means any insurance that is not investment insurance;

"general insurance business" means any insurance business that is not an investment insurance business;

"insurance" means an agreement that in consideration for a payment (the "premium") made by one person (the "insured") to another person (the "insurer"), the insurer will, on a specified event happening during a given period, which event is detrimental to the insured, pay to the insured an agreed amount or series of amounts or the amount of the loss caused to the insured by the event (the "proceeds");

"insurance business" means the business of an insurer in effecting, issuing, and carrying out insurance;

"investment insurance" means insurance of any of the following classes:

(a) insurance where the specified event is the death of an individual who is the insured or an associate of the insured;

(b) insurance where-

(i) the specified event is an individual who is the insured or an associate of the insured sustaining personal injury or becoming incapacitated in a particular manner; and

(ii) the insurance agreement is expressed to be in effect for at least five years or without limit of time and is not terminable by the insurer before the expiry of five years except in circumstances prescribed by the regulations;

(c) insurance under which an amount or series of amounts is to become payable to the insured in the future; and

(d) re-insurance of-

(i) insurance referred to under paragraphs (a) to (c); and

(ii) re-insurance referred to in a previous application of this paragraph; and

"investment insurance business" means the business of an insurer in effecting, issuing, and carrying out investment insurance.

Sec. 181. Premiums

Subject to sections 182 and 183, for the purposes of calculating the income of a person, the deductibility of a premium incurred by the person for insurance is determined in accordance with section 25.

Sec. 182. General Insurance Business

(1) For the purposes of this Act, a person's activities in conducting a general insurance business are treated as a business separate from any other activity of the person and the person's income or loss from the business for any tax year shall be calculated separately.

(2) For the purposes of calculating the income of a person for a tax year from a general insurance business-

(a) there shall be included, together with any other amounts to be included under other provisions of this Act-

(i) premiums derived during the year by the person as insurer, including as re-insurer, in conducting the business; and

(ii) proceeds derived during the year by the person

under any contract of re-insurance in respect of proceeds referred to in paragraph (b)(i); and

(b) there shall be deducted, together with any other amounts deductible under other provisions of this Act-

(i) proceeds incurred during the year by the person as insurer, including as re-insurer, in conducting the business; and

(ii) premiums incurred during the year by the person under any contract of re-insurance in respect of proceeds referred to in subparagraph (i).

(3) Where a person incurs a loss for a tax year from any general insurance business, the person may carry back the loss and deduct it in calculating the income from the business for any of the five previous tax years.

(4) The deduction under subsection (3)-

(a) shall not exceed any income from the business for the previous tax year;

(b) shall not in total exceed the amount of the loss; and

(c) shall reduce the amount of the loss that is considered an unrelieved loss for the purposes of section 33.

Sec. 183. Investment Insurance Business

(1) For the purposes of this Act, a person's activities in conducting an investment insurance business are treated as a business separate from any other activity of the person and the person's income or loss from the business for any tax year shall be calculated separately.

(2) For the purposes of calculating the income of a person for a tax year from an investment insurance business-

(a) there shall be included any amounts to be included under other provisions of this Act but the following amounts are not to be included and are not an incoming of the person:

(i) premiums derived during the year by the person as insurer, including as re-insurer, in conducting the business; and

(ii) proceeds derived during the year by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (b)(i);

(b) there shall be deducted any amounts deductible under other provisions of this Act but the following amounts are not deductible and are not an outgoing of the person:

(i) proceeds incurred during the year by the person as insurer, including as re-insurer, in conducting the business; and

(ii) premiums incurred during the year by the person under any contract of re-insurance in respect of proceeds referred to in subparagraph (i); and

(c) a contract of investment insurance of the business is not an asset or liability of the person.

Sec. 184. Proceeds from Insurance

(1) Subject to subsection (2) and sections 182 and 183, for the purposes of calculating the income of a person, the treatment of proceeds derived by the person from insurance shall be determined in accordance with section 66.

(2) Subject to sections 182 and 183, gains from investment insurance are-

(a) in the case where the proceeds are paid by a resident insurer, taxed in the hands of the payee in the form of a final withholding tax; and

(b) in the case where the proceeds are

paid by a non-resident insurer, included in calculating the income of the payee.

(3) For the purposes of this section, "gain" from investment insurance means the extent to which proceeds from investment insurance paid by an insurer exceed premiums paid to the insurer with respect to the insurance.

Division II: Retirement Savings

Sec. 190. Types of Retirement Funds

(1) The following two types of retirement funds are recognised for the purposes of this Act:

(a) approved retirement funds; and

(b) unapproved retirement funds.

(2) For the purposes of this section-

"approved retirement fund" means a resident retirement fund that has been issued with a ruling by the Commissioner under section 313 currently in force stating that it complies with the requirements prescribed by the regulations;

"retirement contribution" means a payment made to a retirement fund for the provision or future provision of retirement payments;

"retirement fund" means any entity (determined ignoring paragraph (b)(i) of the definition of "company" in section 105(2)) established and maintained solely for the purposes of accepting and investing retirement contributions in order to provide retirement payments to individuals who are beneficiaries of the entity or a dependant of such an individual;

"retirement payment" means a payment made by a person to-

(a) an individual in the event of the individual's retirement; or

(b) a dependant of an individual in the event of the individual's death; and

"unapproved retirement fund" means a retirement fund that is not an approved retirement fund.

Sec. 191: Retirement Contributions

(1) For the purposes of calculating the income of a person, the deductibility of a retirement contribution incurred by the person is determined in accordance with section 25.

(2) Subject to subsection (3), an individual may claim to have their taxable income for a tax year reduced by retirement contributions made during the year by the individual to an approved retirement fund in respect of an interest owned by the individual or a spouse of the individual in the fund.

(3) The reduction claimed by an individual under subsection (2) for any tax year shall not exceed the reasonable retirement limit for the individual prescribed by the regulations.

(4) The incomings for an individual's interest in an approved retirement fund include reductions claimed by the individual under subsection (3) for retirement contributions made with respect to the interest.

Sec. 192. Taxation of Retirement Funds

(1) Subject to this section, the provisions of Part II and Part III apply to a retirement fund and the calculation of income of a retirement fund.

(2) For the purposes of calculating the income of a retirement fund-

(a) retirement contributions received by the fund are not to be included and are not an incoming of the fund;

(b) retirement payments are not deductible and are not an outgoing of the fund; and

(c) the interest of a beneficiary in a retirement fund is not a liability of the fund.

(3) Amounts derived by an approved retirement fund are exempt from income tax.

(4) Where an approved retirement fund ceases to be an approved retirement fund, it shall pay income tax in an amount equal to the income tax rate referred to in section 6(2) applied to-

(a) all retirement contributions received by and taxable income of the fund (calculated ignoring subsection (3)) during the period from its most recent approval as an approved retirement fund to when it ceased to be so approved, less

(b) all retirement payments made by the fund from its most recent approval as an approved retirement fund to when it ceased to be so approved.

(5) Income tax referred to in subsection (4) is due at the time the fund ceases to be approved and is due and payable 15 days after the day on which the fund so ceases.

(6) Any amount referred to in subsection (4)(a) less-

(a) any amount referred to in subsection (4)(b); and

(b) any income tax payable under subsection (4), shall be apportioned according to beneficiaries' interests in the fund and the amount apportioned to each interest is included in the outgoings for the interest.

Sec. 193. Retirement Payments

(1) Subject to section 192(2), for the purposes of calculating the income of a person, the deductibility of a retirement payment incurred by the person is determined in accordance with section 25.

(2) Gains from an interest in an unapproved retirement fund are-

(a) in the case where the retirement payments are paid by a resident fund, taxed in the hands of the payee in the form of a final withholding tax; and

(b) in the case where the retirement payments are paid by a non-resident fund, included in calculating the income of the payee.

(3) For the purposes of calculating a person's income for a tax year, there shall be included retirement payments made by an approved retirement fund to the person during the year.

(4) For the purposes of this section, "gain" from an interest in an unapproved retirement fund means the extent to which retirement payments made by an unapproved retirement fund in respect of an interest in the fund exceed retirement contributions paid to the fund in respect of the interest.

Division III: Foreign Tax Offsets

Sec. 200. Foreign Tax Offsets

(1) Subject to subsection (5), a resident person (other than a partnership) may claim foreign tax offsets for a tax year for any foreign income tax paid by the person to the extent to which it is paid with respect to the person's taxable foreign income for the year.

(2) Foreign tax offsets claimed under subsection (1)-

(a) are calculated separately for each tax year for taxable foreign income sourced in each country; and

(b) with respect to each calculation, shall not exceed the average rate of Symmetrica income tax of the person for the year applied to the person's taxable foreign income sourced in the country.

(3) For the purposes of subsection (1) and (2), there shall be treated as foreign income tax paid by a resident person with respect to the person's taxable foreign income for a tax year sourced in a particular country-

(a) any unrelieved foreign income tax of a previous tax year paid by the person with respect to taxable foreign income sourced in the same country; and

(b) subject to subsection (4), any unrelieved foreign income tax of the tax year or a previous tax year paid by an associate of the person with respect to taxable foreign income of the associate sourced in the same country that is transferred to the person for the year.

(4) An associate of a person may only transfer unrelieved foreign income tax to the person under subsection (3)(b) where the following requirements are met:

(a) either the person or the associate is an entity and the associate is not a partnership;

(b) at all times during the tax year with respect to which the foreign income tax was originally paid, at the time of transfer, and at all times in between-

(i) the person and the associate are residents;

(ii) where the person or the associate is an individual, the individual owns at least 50 percent of the underlying ownership of the entity; and

(iii) where both the person and the associate are entities, there is at least 50 percent common underlying ownership of the entities;

(c) the amount of unrelieved foreign income tax transferred does not result in an excess under subsection (2)(b) for the person, determined after accounting for any unrelieved foreign income tax of the person; and

(d) the transfer is made in writing and signed by both the associate and the person by the time the person must file a return of income for the tax year under section 235.

(5) A person may elect to relinquish a foreign tax offset available for a tax year and claim a deduction for that year for foreign income tax paid for which the offset is available.

(6) To the extent that foreign income tax with respect to which a foreign tax offset or a deduction under subsection (5) is claimed is not otherwise reflected in calculating the income and assessable income of the person making the claim, the foreign income tax shall be included in those calculations and the amount included-

(a) is included at the same time as the taxable foreign income in respect of which the offset or deduction is claimed; and

(b) takes its character as to type and source from that income.

(7) For the purposes of this section-

"average rate of Symmetrica income tax" of a resident person for a tax year means the percentage that income tax payable by the person for the year under section 1(1)(a) (calculated under section 1(3) without a reduction for any foreign tax offsets) is of the taxable income of the person for the year;

"taxable foreign income" of a resident person for a tax year means foreign source income that is included in the person's assessable income from any employment, business, or investment for the year; and

"unrelieved foreign income tax" of a resident person means foreign income tax paid by the person with respect to the person's taxable foreign income (determined ignoring subsection (3))-

(a) for which a foreign tax offset is not granted under subsection (1) as a result of the limitation in subsection (2)(b); and-

(b) that has not been-

(i) treated as paid with respect to taxable foreign income under subsection (3); or

(ii) where the person is a trust, foreigner's Symmetrican branch, or company, allocated to a beneficiary of the entity under section 133(6), 148(3), or (by reason of section 175(3)) 157(4).

PART V: TAX PAYMENT PROCEDURE

Division I: General Obligations

Sec. 205. Types of Tax and Methods of Payment

(1) Tax payable under this Act means-

(a) income tax imposed under section 1(1), including amounts payable-

(i) by a withholding agent or withholdee under section 220;

(ii) by an instalment payer under section 230; and

(iii) on assessment under sections 240, 241, and 242;

(b) interest and penalties imposed by Subdivision A of Division V;

(c) an amount required to be paid to the Commissioner in collection from a tax debtor under section 272(8) or 310(3); and

(e) an amount required to be paid to the Commissioner in respect of a tax liability of a third party under section 280(2), 281(3) or (4), 282(2), or 283(1) or (3).

(2) Tax payable under this Act is payable by one or more of the following methods:

(a) with respect to income tax-

(i) by withholding under Division II;

(ii) by instalment under Division III;

(iii) on assessment under Division IV;

(iv) on change from an approved to an unapproved retirement fund under section 192(4);

(b) with respect to interest and penalties, on assessment under section 255;

(c) with respect to amounts required to be paid to the Commissioner under section 272(8), 281(3) or (4), 282(2), 283(1) or (3), or 310(3), on notification; or

(d) with respect to a liability under section 280(2), on failure to pay tax by the entity.

(3) Tax shall be paid to the Commissioner in the form and at the place prescribed.

Sec. 206. Time for Payment of Tax

(1) This Act distinguishes between tax that is due and tax that is due and payable as follows:

(a) tax that is due by a person is a debt owed to the Government of Symmetrica but may not be payable until a later time; and

(b) tax that is due and payable by a person is a debt owed to the Government of Symmetrica that must be paid immediately and may be recovered under Division V.

(2) Tax is due-

(a) in the case of income tax payable by withholding, at the time provided for in section 220;

(b) in the case of income tax payable on an assessment made under section 241or 242, on the date on which the person assessed is served with a notice of assessment under section 243;

(c) in the case of income tax payable on change from an approved to an unapproved retirement fund, at the time provided in section 192(5); and

(d) in any other case, at the time it is due and payable.

(3) Subject to subsection (4), tax is due and payable-

(a) in the case of income tax payable by withholding, at the time provided for in section 220;

(b) in the case of income tax payable by instalment, on the date by which the instalment is to be paid under section 230;

(c) in the case of income tax payable on an assessment-

(i) under section 240, on the date by which the return of income

must be filed;

(ii) under section 241, on the date specified in the notice of assessment served under section 243; or

(iii) under section 242, within thirty days from the date on which the person assessed is served with a notice of assessment under section 243;

(d) in the case of income tax payable on change from an approved to an unapproved retirement fund, at the time provided in section 192(5);

(e) in the case of interest and penalties under Subdivision A of Division V, on the date specified in the notice of assessment served under section 255;

(f) with respect to amounts required to be paid to the Commissioner under section 272(8), 282(2), 283(1) or (3), or 310(3), on the date set out in the notice;

(g) with respect to a liability under section 280(2), at the same time as the tax is due and payable by the entity; or

(h) with respect to amounts required to be paid to the Commissioner under section 281(3) or (4), seven days after the sale from which the amount is set aside or the failure to set aside, respectively.

(4) On written application by a person, the Commissioner-

(a) may, where good cause is shown, extend the date on which tax or part of tax is due and payable including by permitting payment of the tax by instalments of equal or varying amounts; and

(b) shall serve the person with written notice of the Commissioner's decision on the application.

(5) Where an extension is granted under subsection (4) by permitting the person to pay tax by instalments and the person defaults in paying any of the instalments, the whole balance of the tax outstanding becomes due and payable immediately.

Sec. 207. Maintenance of Documentation

(1) Unless otherwise authorised by the Commissioner by notice in writing, every person liable to tax under this Act shall maintain in Symmetrica such documents as may be necessary-

(a) to explain information to be provided in a return or in any other document to be filed with the Commissioner under this Act; or

(b) to enable an accurate determination of the tax payable by the person.

(2) The documents referred to in this section must be retained for a period of not less than five years from the end of the tax year or years to which they are relevant unless the Commissioner otherwise specifies by notice in writing.

(3) Where any document referred to in subsection (1) is not in an official language of Symmetrica, the Commissioner may, by notice in writing, require the person to provide, at the person's expense, a translation into an official language by a translator approved by the Commissioner in the notice.

Division II: Income Tax Payable by Withholding

Subdivision A: Withholding Obligations

Sec. 210. Withholding by Employers

(1) A resident employer, or non-resident employer who makes an election under section 213, who makes a payment with a source in Symmetrica that is to be included in calculating income of an employee from the employment shall withhold income tax from the payment at the rate provided for in section 5.

(2) The obligation of an employer to withhold income tax under subsection (1) is not reduced or extinguished-

(a) because the employer has a right or

is under an obligation to deduct and withhold any other amount from the payment; or

(b) because of any other law that provides that an employee's income from employment shall not be reduced or subject to attachment.

Sec. 211. Withholding from Investment Returns

(1) Subject to subsection (2), where a resident person, or a non-resident person who makes an election under section 213-

(a) pays a dividend, interest, natural resource payment, gain from investment insurance, gain from an interest in an unapproved retirement fund, rent, royalty, or, where the person is an approved retirement fund, a retirement payment to another person; and

(b) the payment has a source in Symmetrica and is not subject to withholding under section 210, the person shall withhold income tax from the payment at the rate provided for in section 5.

(2) This section does not apply to-

(a) payments made by individuals unless made in conducting a business;

(b) interest paid to a resident financial institution; or

(c) payments that are exempt amounts.

Sec. 212. Withholding from Service Fees and Contract Payments

(1) Subject to subsection (3), a resident person, or a non-resident person who makes an election under section 213, who pays a service fee with a source in Symmetrica shall withhold income tax from the payment at the rate provided for in section 5.

(2) Subject to subsection (3), the Commissioner may, by service of a notice in writing, require a resident person, or a non-resident person who makes an election under section 213, to withhold income tax at the rate provided for in section 5 from any payment-

(a) to be made by the person to a non-resident person under a contract; and

(b) that is not subject to withholding under section 210, 211, or subsection (1).

(3) This section does not apply to-

(a) payments made by individuals unless made in conducting a business; or

(b) payments that are exempt amounts.

Sec. 213. Withholding by Non-Resident Persons

A non-resident person may elect to withhold income tax as required by this Subdivision from payments made by the person during a tax year.

Subdivision B: Procedure Applicable to Withholding

Sec. 220. Statements and Payments of Tax Withheld or Treated as Withheld

(1) Every withholding agent shall file with the Commissioner within 15 days after the end of each calendar month a statement in the manner and form prescribed specifying-

(a) payments made by the agent during the month that are subject to withholding under Subdivision A;

(b) the name, address, and, in the case of a resident withholdee, tax identification number of the withholdee;

(c) income tax withheld from each payment (ignoring subsection (3)); and

(d) any other information that the Commissioner may prescribe.

(2) Together with the statement referred to in subsection (1), a withholding agent shall pay to the Commissioner any income tax that has been withheld during the month or that is treated by subsection (3) as withheld.

(3) A withholding agent who fails to

withhold income tax in accordance with Subdivision A is treated as though the tax had been withheld at the time required.

(4) Any income tax withheld under Subdivision A or treated as withheld by subsection (3) is due by the withholding agent at the time the payment is made and due and payable by the withholding agent and, where subsection (5) applies, the withholdee at the end of the fifteen day period referred to in subsection (1).

(5) Where a withholding agent- and

(a) fails to withhold income tax from a payment as required by Subdivision A;

(b) does not pay the income tax treated as paid under subsection (3) to the Commissioner by the date the tax is due and payable under subsection (4), then the withholdee is jointly and severally liable with the withholding agent for the payment of the tax to the Commissioner.

(6) A withholding agent who withholds income tax under Subdivision A and pays the tax to the Commissioner is treated as having paid the amount withheld to the withholdee for the purposes of any claim by the withholdee for payment of the amount withheld.

(7) A withholding agent who fails to withhold income tax under Subdivision A but pays the tax treated as withheld under subsection (3) to the Commissioner is entitled to recover an equal amount from the withholdee.

Sec. 221. Withholding Certificates

(1) A withholding agent shall prepare and serve on a withholdee-

(a) separately for each period referred to in subsections (2) and (3);

(b) at the time referred to in those subsections; and

(c) in the form prescribed, a withholding certificate setting out the amount of payments made to the withholdee and income tax withheld from those payments under Subdivision A by the agent during the period.

(2) Subject to subsection (3), a withholding certificate shall cover a calendar month and shall be served within 15 days after the end of the month.

(3) In the case of income tax withheld under section 210, a withholding certificate-

(a) shall cover the part of the calendar year during which the employee is employed; and

(b) shall be served by 30 January after the end of the year or, where the employee has ceased employment with the withholding agent during the year, no more than 30 days from the date on which the employment ceased.

Sec. 222. Final Withholding Payments

(1) Subject to subsection (3), for the purposes of this Act, the following are final withholding payments:

(a) dividends paid by a resident company;

(b) gains from investment insurance and gains from interests in unapproved retirement funds paid by a resident person; and

(c) payments made to non-resident persons that are subject to withholding under Subdivision A.

(2) For the purposes of this Act, an investment final withholding payment is a final withholding payment subject to withholding-

(a) under section 211; or

(b) where the payment is made to a person who is an associate of the withholding agent, under section 210 or 212.

(3) A non-resident person who-

(a) makes an election under section 213 with respect to a tax year; and

(b) withholds income tax as required by Subdivision A from all payments made during the

year, may further elect that any payments received during the year that are final withholding payments (determined ignoring this subsection), other than those referred to in subsection (1)(a) and (b), are not final withholding payments.

(4) Income tax-

(a) withheld from a final withholding payment under Subdivision A; or

(b) treated by section 220(3) as withheld from such a payment that is paid to the Commissioner by the withholding agent or the withholdee, satisfies the withholdee's income tax liability under section 1(1)(c).

Sec. 223. Inclusion and Credit for Non-Final Withholding Tax

(1) The withholdee of a payment that is not a final withholding payment is treated as having paid any income tax-

(a) withheld from the payment under Subdivision A; or

(b) treated by section 220(3) as withheld from the payment that is paid to the Commissioner by the withholding agent or the withholdee, and the withholdee is entitled to a tax credit in an amount equal to the tax treated as paid for the tax year in which the payment is derived.

(2) To the extent that income tax with respect to which a tax credit is available is not otherwise reflected in calculating the income and assessable income of the person entitled to the credit, the income tax shall be included in those calculations and the amount included-

(a) is included at the same time as the payment in respect of which the credit is available; and

(b) takes its character as to type and source from the payment.

Division III: Income Tax Payable by Instalment

Sec. 230. Payment of Income Tax by Instalment

(1) A person (an "instalment payer") who derives or expects to derive any assessable income during a tax year from a business or investment shall pay income tax for the year by quarterly instalments as provided for by this section.

(2) An instalment payer shall pay four instalments of income tax-

(a) in the case of a person whose tax year is a twelve month period beginning at the start of a calendar month, on or before the last day of the third, sixth, ninth, and twelfth months of the tax year, or

(b) in any other case, at the end of each three-month period commencing at the beginning of the tax year and a final instalment on the last day of the year unless it coincides with the end of one of the three-month periods.

(3) Subject to subsection (4), the amount of each instalment of income tax payable by an instalment payer for a tax year is calculated according to the following formula-

$$\frac{A - B}{C}$$

where-

A is the estimated tax payable by the instalment payer for the year at the time of the instalment;

B is the total sum of any-

(a) income tax paid during the year but prior to the due date for payment of the instalment by the person by previous instalment under this section;

(b) income tax withheld under

Subdivision A of Division II during the year but prior to the due date for payment of the instalment from payments received by the person during the year that are included in calculating the person's income for the year;

(c) income tax treated by section 220(3) as withheld from a payment of the kind referred to in paragraph (b) that is paid to the Commissioner by the withholding agent or the withholdee during the year but prior to the due date for payment of the instalment; and

(d) medical costs offset that may be claimed under section 116 with respect to approved medical costs paid by the person prior to the due date for payment of the instalment; and

C is the number of instalments remaining for the year including the current instalment.

(4) Where the amount of an instalment calculated under subsection (3) is less than SY 100, the amount of the instalment is nil.

(5) An instalment payer is entitled to a tax credit for a tax year in an amount equal to the income tax paid by way of instalment for the year under this section.

Sec. 231. Statement of Estimated Tax Payable

(1) Subject to subsection (6), every person who is an instalment payer for a tax year shall file with the Commissioner by the date for payment of the first tax instalment for the year under section 230 a statement in the manner and form prescribed specifying the person's estimate of-

(a) the person's assessable income for the year from each employment, business, and investment and the source of that income;

(b) the person's taxable income for the year and the income tax to become payable with respect to that income under section 1(1)(a) calculated under section 1(3) without reduction for any medical costs offset;

(c) in the case of a foreigner's Symmetrican branch, the branch's repatriated income for the year and the income tax to become payable with respect to that income under section 1(1)(b); and

(d) any other information that the Commissioner may prescribe.

(2) Subject to subsections (5) and (7), the sum of the income tax referred to in subsection (1)(b) and (c) is the person's estimated tax payable for the tax year.

(3) In estimating income tax payable for a tax year under subsection (1)(b) and calculating any foreign tax offset to be claimed under section 200, a person may only take account of foreign income tax that the person has paid or the person reasonably estimates will be paid during the year.

(4) An instalment payer's estimate under subsection (1) shall remain in force for the whole of the tax year unless the person files with the Commissioner a revised estimate, in the form and specifying the information referred to in subsection (1), together with a statement of reasons for the revision.

(5) Subject to subsection (6), a revised estimate filed by a person under subsection (4) is the person's estimated tax payable for the tax year, but only for the purposes of calculating instalments payable under section 230 for the year after the date the revised estimate is filed with the Commissioner.

(6) The Commissioner may specify by

notice in writing that an instalment payer or class of instalment payers are not required to submit an estimate under subsection (1).

(7) Where an instalment payer fails to file an estimate for a tax year as required by subsection (1), the Commissioner is not satisfied with the estimate or revised estimate filed, or an instalment payer is not required to submit an estimate by reason of subsection (6), the Commissioner shall-

(a) make an estimate of the person's estimated tax payable for the year, which may be based on income tax payable under section 1(1)(a) and (b) for the previous tax year; and

(b) serve on the instalment payer a written notice stating the Commissioner's estimate, the manner in which it is calculated, and, where the person has filed an estimate, the reasons why the Commissioner is not satisfied with the person's estimate.

(8) Where the Commissioner serves an instalment payer with a notice under subsection (7), then for the purposes of section 230 the estimated tax payable by the person for the tax year is the amount estimated by the Commissioner.

Division IV: Income Tax Payable on Assessment

Subdivision A: Returns

Sec. 235. Returns of Income

(1) Subject to sections 236, 237, and 241, every person shall file with the Commissioner not later than three months after the end of each tax year a return of income for the year.

(2) A return of income of a person for a tax year shall-

(a) be in the manner and form prescribed specifying-

(i) the person's assessable income for the year from each employment, business, and investment and the source of that income;

(ii) the person's taxable income for the year and the income tax payable with respect to that income under section 1(1)(a);

(iii) in the case of a foreigner's Symmetrican branch, the branch's repatriated income for the year and the income tax payable with respect to that income under section 1(1)(b);

(iv) any income tax paid by the person for the year by withholding, instalment, or assessment for which a tax credit is available under section 223, 230, or 241;

(v) the amount of income tax still to be paid for the year calculated as the sum of the tax referred to in subparagraphs (ii) and (iii) less the tax already paid referred to in subparagraph (iv); and

(vi) any other information that the Commissioner may prescribe;

(b) be signed by the person and include a declaration that the return is complete and accurate; and

(c) have attached to it-

(i) any withholding certificates supplied to the person under section 221 with respect to payments derived by the person during the year;

(ii) any statement provided to the person under subsection

(4);

(iii) any estimate made during the year under section 50(3); and

(iv) any other information that the Commissioner may prescribe.

(3) A person who, in return for a payment, prepares or assists in the preparation of a return of income or an attachment to a return of income of another person (other than as employee of the other person), shall sign the return certifying that-

(a) the first-mentioned person has examined the relevant documents of the other person maintained under section 207, and

(b) to the best of the first-mentioned person's knowledge, the return or attachment correctly reflects the circumstances to which it relates.

(4) Where a person referred to in subsection (3) refuses to sign a return of income as required by that subsection, the person shall furnish the other person with a statement in writing of the reasons for such refusal.

(5) Subject to sections 236, 237 and 241, where prior to the date for filing a return of income for a tax year under subsection (1)-

(a) a person becomes bankrupt, is wound-up, or goes into liquidation;

(b) a person is about to leave Symmetrica indefinitely;

(c) a person is otherwise about to cease activity in Symmetrica; or

(d) the Commissioner otherwise considers it appropriate, the Commissioner may, by notice in writing served on the person, require the person to file, by the date specified in the notice, a return of income for the year or part of the year.

Sec. 236. Return of Income Not Required

Unless requested by the Commissioner by notice in writing served on the person, no return of income for a tax year is required under section 235 from-

(a) a person who has no income tax payable for the year under section 1(1)(a) or (b); or

(b) a resident individual-

(i) whose income for the year consists exclusively of income from any employment having a source in Symmetrica;

(ii) who has only one employment at a time during the year, even if the employment changes during the year, and each employment is by a resident employer; and

(iii) who does not claim for the year-

(a) averaging under section 5(2);

(b) a medical costs offset under section 116, other than with respect to medical costs paid through the employer; or

(c) a reduction in taxable income under section 191(2), other than with respect to retirement contributions paid through the employer, but such a person may elect to file a return of income in any case.

Sec. 237. Extension of Time to File Return of Income

(1) Subject to subsection (2), where a person who is required to file a return of income under section 235 makes a written request to the Commissioner

by the due date for filing the return, the Commissioner-

(a) may, on such terms and conditions as the Commissioner thinks appropriate (including as to payment of security) and where reasonable cause is shown, extend the date by which the return is to be filed; and

(b) shall serve the person with written notice of the Commissioner's decision on the application.

(2) The Commissioner may grant multiple extensions under subsection (1) with respect to the filing of a return of income but the extensions shall not in total exceed 60 days from the date the return was originally to be filed.

Subdivision B: Assessments

Sec. 240. Self-Assessments

(1) Where a person files a return of income for a tax year, an assessment is treated as made on the due date for filing the return of-

(a) the income tax payable by the person for the year under section 1(1)(a) and (b) in the amount shown in the return; and

(b) the amount of that tax still to be paid for the year in the amount shown in the return (the "tax payable on the assessment").

(2) Where a person fails or is not required to file a return of income for a tax year then, until such time as a return is filed, an assessment is treated as made on the due date for filing the return that-

(a) the income tax payable by the person for the year is equal to the sum of any income tax withheld from payments derived by the person during the year under Division II and any income tax paid by the person by instalment for the year under Division III; and

(b) there is no tax payable on the assessment.

Sec. 241. Jeopardy Assessments

(1) Where a person is required to file a return of income under section 235(5) for part of a tax year, section 240 applies as though a reference to a tax year were a reference to the part of the year for which the return is to be filed.

(2) In the circumstances specified in section 235(5), instead of requiring a person to file a return of income, the Commissioner may, according to the Commissioner's best judgement, make an assessment of-

(a) the amounts referred to in section 235(2)(a)(i) to (iv) for the tax year or part of the year; and

(b) in accordance with section 235(2)(a)(v), the amount of income tax still to be paid for the year or part of the year (the "tax payable on the assessment").

(3) Where an assessment is made under section 240 by reason of subsection (1) or under subsection (2) (the "jeopardy assessment")-

(a) with respect to a full tax year, the assessed person shall not file a return of income for the year under section 235(1); or

(b) with respect to part of a tax year, the assessed person is still required to file a return of income under section 235(1) for the year.

(4) Any income tax paid on a jeopardy assessment of the type referred to in subsection (3)(b) is available as a tax credit against the tax payable on an assessment made for the full tax year.

Sec. 242. Amended Assessments

(1) Subject to this section, the Commissioner may amend an assessment made under section 240, 241, or this section so as to adjust the assessed person's liability to tax, including any tax payable on the assessment, in such manner as, according to the Commissioner's best judgement, is consistent with the intention of this Act.

(2) Subject to subsections (3) and (4), the Commissioner may amend an assessment under subsection (1) within three years after-

(a) in the case of an assessment under section 240 (including by reason of section 241(1)), the due date for filing the return of income to which the assessment relates;

(b) in the case of an assessment under section 241(2), the date on which the notice of assessment is served on the person assessed as required by section 243; and

(c) in the case of an amended assessment under subsection (1), the date referred to in paragraph (a) or (b) with respect to the assessment under section 240 or 241 that was originally amended.

(3) The Commissioner may amend an assessment under subsection (1) at any time-

(a) in the case of an assessment under section 240 where the person assessed fails to file a return of income in accordance with section 235 with the intent of evading or delaying the payment of tax;

(b) in the case of an assessment that is inaccurate by reason of fraud or any gross or willful neglect by or on behalf of the assessed person; or

(c) where new information is uncovered that renders the assessment inaccurate.

(4) The Commissioner may not amend an assessment to the extent that the assessment has been amended or reduced pursuant to an order of a court of competent jurisdiction unless the order is vacated.

Sec. 243. Notice of Assessment

Where the Commissioner makes an assessment under section 241(2) or 242, the Commissioner shall serve a written notice of the assessment on the person stating-

(a) the Commissioner's assessment of- and

(i) the income tax payable by the person under section 1(1)(a) and (b);

(ii) the tax payable on the assessment, for the tax year or period to which the assessment relates;

(b) the manner in which the assessment referred to in paragraph (a) is calculated;

(c) the reasons why the Commissioner has made the assessment;

(d) the date on which the tax payable on the assessment is due and due and payable; and

(e) the time, place, and manner of objecting to the assessment.

Division V: Non-Compliance

Subdivision A: Interest and Penalties

Sec. 250. Penalty for Failure to Maintain Documentation or File Statement or Return of Income

(1) A person who fails to-

(a) maintain proper documents for a tax year as required by section 207(1);

(b) file a statement for a tax year as required by section 231(1); or

(c) file a return of income for a tax year as required by section 235(1), is liable for a penalty for each month and part of a month during which the failure continues calculated as the higher of-

(d) the statutory rate applied to the product of-

(i) all amounts required to be included in calculating the person's income that is included in the person's assessable income for the year (gross of any deductions); and

(ii) the rate of income tax referred to in section 6(1); or

(e) SY 100.

(2) A withholding agent who fails to file a statement as required by section

220(1) is liable for a penalty for each month or part of a month during which the failure continues calculated as the higher of-

(a) the statutory rate applied to the amount of income tax required to be withheld under Subdivision A of Division II from payments made by the agent during the month to which the failure relates; or

(b) SY 100.

Sec. 251. Interest for Understating Estimated Tax Payable by Instalment

(1) This section applies where-

(a) an instalment payer's estimate or revised estimate of income tax payable for a tax year under section 231, which is used to calculate an instalment of income tax for the year payable under section 230; is less than

(b) 90 percent of the income tax payable by the payer for the year under section 1(1)(a) and (b) (the "correct amount").

(2) Where this section applies, the instalment payer is liable for interest for each month or part of a month (the "period") from the date the first instalment for the year is due and payable until the due date by which the person must file a return of income for the year under section 235(1).

(3) The amount of interest that an instalment payer must pay for each period under subsection (2) is calculated as the statutory rate, compounded monthly, applied to the excess of-

(a) 90 percent of the total amount that would have been paid by way of instalments during the tax year to the start of the period had the person's estimate or revised estimate equalled the correct amount, over

(b) the amount of income tax paid by instalments during the year to the start of the period.

Sec. 252. Interest for Failure to Pay Tax

(1) A person who fails to pay tax on or before the date on which the tax is due and payable is liable for interest for each month or part of a month (the "period") for which any of the tax is outstanding calculated as the statutory rate, compounded monthly, applied to the amount outstanding at the start of the period.

(2) For the purposes of calculating interest payable under subsection (1), any extension granted under section 206(4) or 237 is ignored.

(3) A withholding agent may not recover from a withholdee interest payable by the agent in respect of a failure to comply with section 220(4).

Sec. 253. Penalty for Making False or Misleading Statements

(1) A person who-

(a) makes a statement to the Commissioner that is false or misleading in a material particular; or

(b) omits from a statement made to the Commissioner any matter or thing without which the statement is misleading in a material particular, is liable for a penalty equal to-

(c) where the statement or omission is made without reasonable excuse, 50 percent of the underpayment of tax that, in the Commissioner's view, may have resulted if the inaccuracy of the statement had gone undetected; or

(d) where the statement or omission is made knowingly or recklessly, 100 percent of the underpayment of tax that, in the Commissioner's view, may have resulted if the inaccuracy of the statement had gone undetected.

(2) A reference in this section to a statement made to the Commissioner is a reference to a statement made in writing to the Commissioner or an officer of the Income Tax Service acting in the performance of duties

under this Act, and includes a statement made-

(a) in an application, notification, return, objection, statement, or other document made, prepared, given, or filed under this Act;

(b) in a document furnished to the Commissioner or such an officer otherwise than pursuant to this Act;

(c) in answer to a question asked of a person by the Commissioner or such an officer; or

(d) to another person with the knowledge or reasonable expectation that the statement will be conveyed to the Commissioner or such an officer.

Sec. 254. Penalty for Aiding and Abetting

A person who knowingly or recklessly aids, abets, counsels, or induces another person to commit an offence of a type referred to in Subdivision B is liable for a penalty equal to 100 percent of the underpayment of tax that, in the Commissioner's view, may have resulted if the offence had been committed and had gone undetected.

Sec. 255. Assessment of Interest and Penalties

(1) The Commissioner shall make an assessment of the interest and penalties for which a person is liable under this Subdivision.

(2) Liability for interest and penalties under this Subdivision with respect to a particular failure or statement is calculated separately for each section of this Subdivision.

(3) The imposition of interest and penalties under this Subdivision is in addition to any other tax imposed by this Act and does not relieve any person from liability to criminal proceedings under Subdivision B.

(4) Where an assessment has been made under this section, the Commissioner shall serve a written notice of assessment on the person, which notice may be incorporated with a notice under section 243, stating-

(a) the Commissioner's assessment of the interest or penalties;

(b) the manner in which the assessment referred to in paragraph (a) is calculated;

(c) the reasons why the Commissioner has made the assessment;

(d) the date on which the interest or penalties are due and due and payable; and

(e) the time, place, and manner of objecting to the assessment.

(5) Sec. 242 applies to an assessment made under this section as though-

(a) a reference to an assessment in section 242(1), (2)(b), (3), and (4) included an assessment made under this section; and

(b) a reference in section 242(2)(b) to section 243 were a reference to subsection (4) of this section.

Subdivision B: Offences

Sec. 260. Offence of Failure to Comply with Act

Except as otherwise provided in this Act, any person who fails to comply with a provision of this Act commits an offence and is liable on summary conviction-

(a) where the failure results or, if undetected, may have resulted in an underpayment of tax in an amount exceeding SY 500, to a fine of not less than SY 100 and not more than SY 500; and

(b) in any other case, to a fine of not less than SY 25 and not more than SY 100.

Sec. 261. Offence of Failure to Pay Tax

Any person who without reasonable excuse fails to pay any tax on or before the date on which the tax is due and payable commits an offence and is liable on summary conviction-

(a) where the failure is to pay tax in excess of SY 500, to a fine of not less than SY 250 and not more than SY 1000, imprisonment for a term of not less than three months and not more than one year, or both; and

(b) in any other case, to a fine of not less than SY 50 and not more than SY 250, imprisonment for a term of not less than one month and not more than three months, or both.

Sec. 262. Offence of Making False or Misleading Statements

(1) A person who-

(a) makes a statement to the Commissioner or appears as a witness before the Income Tax Tribunal and gives evidence that is false or misleading in a material particular; or

(b) omits from a statement or evidence referred to in paragraph (a) any matter or thing without which the statement or evidence is misleading in a material particular, commits an offence and is liable on summary conviction-

(c) where the statement or omission is made without reasonable excuse-

(i) and, if the inaccuracy of the statement were undetected, may have resulted in an underpayment of tax in an amount exceeding SY 500, to a fine of not less than SY 250 and not more than SY 1000, imprisonment for a term of not less than three months and not more than one year, or both; and

(ii) in any other case, to a fine of not less than SY 50 and not more than SY 250, imprisonment for a term of not less than one month and not more than three months, or both; or

(d) where the statement or omission is made knowingly or recklessly-

(i) and, if the inaccuracy of the statement were undetected, may have resulted in an underpayment of tax in an amount exceeding SY 500, to a fine of not less than SY 500 and not more than SY 2000, imprisonment for a term of not less than one year and not more than two years, or both; and

(ii) in any other case, to a fine of not less than SY 100 and not more than SY 500, imprisonment for a term of not less than six months and not more than one year, or both.

(2) A reference in this section to a statement made to the Commissioner has the same meaning as in section 253(2).

Sec. 263. Offence of Impeding Tax Administration

A person who without reasonable excuse-

(a) obstructs or attempts to obstruct an officer of the Income Tax Service acting in the performance of duties under this Act;

(b) fails to comply with a notice under section 321 or fails to provide evidence to the Income Tax Tribunal as required under section 337(2)(a);

(c) is found guilty of contempt of the Income Tax Tribunal under section 337(2)(c); or

(d) otherwise impedes or attempts to impede the administration of this Act, commits an offence and is liable on summary conviction to a fine of not less than SY 100 and not more than SY 2000, imprisonment for a term of not more than two years, or both.

Sec. 264. Offences by Authorised and Unauthorised Persons

(1) Any person who-

(a) being an officer of the Income Tax Service acting in the performance of duties under this Act-

(i) directly or indirectly

asks for or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer is lawfully entitled to receive; or

(ii) agrees to, permits, conceals, connives at, or acquiesces in any act or thing whereby the Government is or may be defrauded with respect to any matter under this Act, including the payment of tax; or

(b) not being authorised under this Act, collects or attempts to collect an amount of tax payable under this Act or an amount that the person describes as such tax, commits an offence and is liable on summary conviction to a fine of not less than SY 500, imprisonment for a term of not less than one year and not more than three years, or both.

(2) Any person who contravenes section 322 commits an offence and is liable on summary conviction to a fine not exceeding SY 1000, imprisonment for a term not exceeding one year, or both.

Sec. 265. Offence of Aiding or Abetting

Any person who knowingly or recklessly aids, abets, counsels, or induces another person to commit an offence under this Act (the "original offence") commits an offence and is liable on summary conviction-

(a) where the original offence involves a statement of the kind mentioned in section 262(1)(a) or (b) that, if the inaccuracy of the statement were undetected, may have resulted in an underpayment of tax in an amount exceeding SY 500, to a fine of not less than SY 500 and not more than SY 2000, imprisonment for a term of not less than one year and not more than two years, or both; and

(b) in any other case, to a fine of not less than SY 100 and not more than SY 500, imprisonment for a term of not less than six months and not more than one year, or both.

Subdivision C: Recovery of Tax from Tax Debtor

Sec. 270. Suit for Unpaid Tax

Subject to the general directions of the Attorney-General, tax that has not been paid when it is due and payable may be sued for and recovered in any court of competent jurisdiction by the Commissioner acting in the Commissioner's official name.

Sec. 271. Security for Income Tax Payable by Withholding

(1) Income tax that a withholding agent is required to withhold from a payment under Subdivision A of Division II is-

(a) a first charge on the payment; and

(b) withheld prior to any other deduction that the withholding agent may be required to make by virtue of an order of any court or any other law.

(2) Income tax withheld by a withholding agent under Subdivision A of Division II-

(a) is held in trust for the Government of Symmetrica including any assets acquired by the agent into which the tax withheld may be traced;

(b) is not subject to attachment in respect of a debt or liability of the agent; and

(c) in the event of the liquidation or bankruptcy of the agent, does not form part of the estate in liquidation or bankruptcy and the Commissioner acting for the Government has a first claim over the tax or assets before any distribution in

liquidation or bankruptcy is made.

Sec. 272. Charge Over Assets

(1) The Commissioner may cause a charge to be created in favour of the Government of Symmetrica over the assets of a person (the "tax debtor") as provided by this section where-

(a) the person fails to pay tax on or before the date the tax is due and payable; or

(b) the Commissioner believes on reasonable grounds that the person will not pay tax that is currently due by the date on which it becomes due and payable.

(2) Subject to subsection (3), the Commissioner creates a charge referred to in subsection (1) by serving the tax debtor with a notice in writing specifying the tax debtor, the assets charged, the extent of the charge as provided for in subsection (3), the tax to which the charge relates, and details regarding the Commissioner's power of sale under section 273.

(3) The assets of a tax debtor charged under subsection (2) are charged to the extent of the tax due, interest accruing with respect to that tax under section 252, and any costs of charge and sale.

(4) A charge created under subsection (2) does not have effect until-

(a) where land or buildings are charged, the Commissioner files an application to register the charge under subsection (6);

(b) where other tangible assets are charged, the Commissioner takes possession of the assets in accordance with section 273(3); and

(c) in any other case, the notice is served on the tax debtor under subsection (2).

(5) A charge created under subsection (2) is released when the tax debtor pays to the Commissioner in full the amounts referred to in subsection (3) that are secured by the charge.

(6) Where the Commissioner creates a charge over land or buildings under subsection (2), the Commissioner shall apply to the Chief Registrar of Titles (the "Chief Registrar") and the Chief Registrar shall, without fee, register the charge referred to in subsection (2) on the title of the land or buildings.

(7) Where a charge over land or buildings is released under subsection (5), the Commissioner shall file a release of the charge with the Chief Registrar and the Chief Registrar shall, without fee, remove the entry of the charge from the title of the land or buildings.

(8) The Commissioner may at any time serve on a tax debtor a notice in writing specifying any costs of charge and sale with respect to assets of the debtor incurred by the Commissioner prior to the date of service and requiring the debtor to pay those costs to the Commissioner by the date specified in the notice.

(9) For the purposes of this section, "costs of charge and sale" with respect to assets means any costs incurred or to be incurred by the Commissioner-

(a) under this section with respect to creating or releasing a charge over the assets, or

(b) under section 273 with respect to taking possession of, holding, and selling the charged assets.

Sec. 273. Sale of Charged Assets

(1) The Commissioner may notify a tax debtor of the Commissioner's intention to sell charged assets owned by the debtor (a "subsection (1) notice").

(2) A subsection (1) notice may be incorporated into or accompany a notice referred to in section 272(2) and shall be in writing, served on the tax debtor, and specify-

(a) the charged assets, the Commissioner's intention to sell those assets, and the proposed method and timing of sale; and

(b) in the case of tangible assets, the manner and place at which the Commissioner intends to take possession of the assets.

(3) The Commissioner may-

(a) take possession of tangible assets referred to in a subsection (1) notice at any time after the notice is served;

(b) for the purposes of taking possession, enter at any time any premises described in the subsection (1) notice and request the assistance of the police; and

(c) where the assets are tangible assets other than land or buildings, store the assets, at the cost of the tax debtor, at any place that the Commissioner considers appropriate.

(4) Where the Commissioner serves a tax debtor with a subsection (1) notice, the Commissioner may-

(a) where the charged assets are land or buildings, 30 days after taking possession under subsection (3);

(b) where the charged assets are perishable tangible assets, one day after taking possession under subsection (3);

(c) where the charged assets are tangible assets other than those referred to in paragraph (a) or (b), 10 days after taking possession under subsection (3); and

(d) in any other case, 10 days after service of the subsection (1) notice, sell the charged assets by public auction or deal with the assets in such manner as the Commissioner considers appropriate.

(5) The proceeds of a sale under subsection (4) shall be used to pay the costs of charge and sale of the assets sold, then to pay the tax due and interest accrued with respect to that tax under section 252, and any remainder shall be paid to the tax debtor.

(6) After applying sale proceeds in accordance with subsection (5), the Commissioner shall serve the tax debtor with a written notice detailing the manner in which the sale proceeds have been applied.

(7) If the proceeds of a sale applied in accordance with subsection (5) are insufficient to pay in full the costs of charge and sale, the tax due, and interest accrued with respect to that tax under section 252, the Commissioner may proceed to collect the insufficiency with fresh actions under this Subdivision or Subdivision D.

(8) This section does not restrict the exercise of any rights that the Commissioner otherwise has by reason of a security created under section 271 or 272.

(9) For the purposes of this section-

"charged assets" owned by a tax debtor means assets held by a withholding agent on trust under section 271(2) or assets of a tax debtor that the Commissioner has created a charge over under section 272(2);

"costs of charge and sale" with respect to assets has the meaning in section 272(9); and

"tax debtor" has the meaning in section 272 and includes a withholding agent referred to in section 271.

Sec. 274. Departure Prohibition Order

(1) This section applies where-

(a) a person fails to pay tax on or before the date the tax is due and payable; or

(b) the Commissioner believes on reasonable grounds that a person will not pay tax that is currently due by the date on which it becomes due and payable.

(2) Where this section applies, the Commissioner may, by notice in writing to the Director of Immigration, order the Director to prevent the person from leaving Symmetrica for a period of 72 hours from the time the notice is served on the Director.

(3) The Commissioner shall withdraw a notice under subsection (2) where the person pays the tax or makes an arrangement for payment satisfactory to the Commissioner.

(4) On application by the Commissioner, the High Court may extend the period referred to in subsection (2).

Subdivision D: Third Party Liability

Sec. 280. Officers of Entities

(1) Subject to subsection (3), when an entity commits an offence, every person who is an officer of the entity at that time is treated as also committing the same offence.

(2) Subject to subsection (3), where an entity commits an offence by failing to pay tax on or before the date on which the tax is due and payable, every person who is an officer of the entity at that time or was such an officer within the previous six months is jointly and severally liable with the entity and every other such person for payment of the tax.

(3) Subsections (1) and (2) do not apply where-

(a) the offence is committed by the entity without the person's knowledge or consent; and

(b) the person has exercised the degree of care, diligence, and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the commission of the offence.

(4) Where a person pays tax under subsection (2)-

(a) the person may recover the payment from the entity;

(b) for the purposes of paragraph (a), the person may retain out of any assets (including money) of the entity in or coming into the possession of the person an amount not exceeding the payment; and

(c) no claim may be made against the person by the entity or any other person with respect to the retention.

(5) For the purposes of this section, "officer" of an entity means a manager of the entity or a person purporting to act in that capacity.

Sec. 281. Recovery of Tax from Receiver

(1) A receiver shall notify the Commissioner in writing within fourteen days of being appointed to the position of receiver or taking possession of an asset situated in Symmetrica, whichever occurs first.

(2) The Commissioner may serve a receiver with a notice in writing of the amount that appears to the Commissioner to be sufficient to provide for any tax that is due or will become due by the tax debtor.

(3) After receiving a notice under subsection (2), a receiver-

(a) shall sell sufficient of the assets that come into the receiver's possession under the receivership to set aside, after payment of any debts having priority over the tax referred to in that subsection, the amount notified by the Commissioner under that subsection; and

(b) is liable to pay to the Commissioner on account of the tax debtor's tax liability the amount set aside.

(4) To the extent that a receiver fails to set aside an amount as required by subsection (3), the receiver is personally liable to pay to the Commissioner on account of the tax debtor's tax liability the amount that should have been set aside but may recover any amount paid from the tax debtor.

(5) For the purposes of this section-

“receiver” means any person who, with respect to an asset situated in Symmetrica, is-

(a) a liquidator of an entity;

(b) a receiver appointed out of court or by a court in respect of an asset or entity;

(c) a trustee for a bankrupt person;

(d) a mortgagee in possession;

(e) an executor or administrator of a deceased individual's estate; or

(f) conducting the affairs of an incapacitated individual; and

"tax debtor" means the person whose assets come into the possession of a receiver.

Sec. 282. Recovery of Tax from Person Owing Money to Tax Debtor

(1) This section applies where tax is due by a person (the "tax debtor") and-

(a) the tax debtor fails to pay the tax on or before the date it is due and payable; or

(b) the Commissioner believes on reasonable grounds that the tax debtor will not pay the tax by the date on which it becomes due and payable.

(2) Where this section applies, the Commissioner may by notice in writing require any person (the "payer")-

(a) owing or who may subsequently owe money to the tax debtor;

(b) holding or who may subsequently hold money for, or on account of, the tax debtor;

(c) holding or who may subsequently hold money on account of a third person for payment to the tax debtor; or

(d) having authority from a third person to pay money to the tax debtor, to pay, on account of and to the extent of the tax due by the tax debtor, the money to the Commissioner on the date set out in the notice.

(3) The Commissioner shall serve the payer with the notice referred to in subsection (2) and, as soon as practicable after that service, serve the tax debtor with a copy of the notice.

(4) The date specified in the notice under subsection (2) must not be a date before-

(a) the money becomes payable to the tax debtor or the money is held on behalf of the tax debtor; and

(b) the payer is served with the notice under subsection (3).

(5) A person making a payment pursuant to a notice under subsection (2) is treated as making the payment to the tax debtor for the purposes of any claim by the tax debtor or any other person for or with respect to the payment.

Sec. 283. Recovery of Tax from Agent of Non-resident

(1) Where tax is due by a non-resident person (the "tax debtor") and-

(a) the tax debtor fails to pay the tax on or before the date it is due and payable; or

(b) the Commissioner believes on reasonable grounds that the tax debtor will not pay the tax by the date on which it becomes due and payable, the Commissioner may, by service of a notice in writing, require a person who is in possession of an asset owned by the tax debtor to pay tax on behalf of the tax debtor, up to the market value of the asset but not exceeding the amount of tax due by the tax debtor.

(2) For the purposes of subsection (1)-

(a) a tax debtor who charters an aircraft or ship under a charter exceeding three years is treated as owning the aircraft or ship during that period; and

(b) the captain of any aircraft or ship is treated as being in possession of the aircraft or ship.

(3) The Commissioner may, by service of a notice in writing, require a resident partnership or a resident partner to pay on behalf of a non-resident partner tax due by the non-resident partner up to the amount of tax due that is attributable to any amount included in calculating the non-resident partner's income under section 122.

(4) Where a person makes a payment to the Commissioner pursuant to a notice under subsection (1) or (3)-

(a) the person may recover the

payment from the tax debtor or non-resident partner;

(b) for the purposes of paragraph (a), the person may retain out of any assets (including money) of the tax debtor or non-resident partner in or coming into the possession of the person an amount not exceeding the payment; and

(c) the tax debtor, non-resident partner, or any other person may not make a claim against the person with respect to the retention.

(5) For the purposes of this section, "non-resident partner" includes a foreigner's Symmetrican branch of a non-resident partner referred to in section 122(5).

Subdivision E: Proceedings Under Subdivisions B, C, and D

Sec. 290. Compounding Offences

(1) Subject to subsection (2), where any person commits an offence under Subdivision B, other than of a kind referred to in section 264, the Commissioner may, at any time prior to the commencement of court proceedings-

(a) compound the offence; and

(b) order the person to pay a sum of money specified by the Commissioner but not exceeding the amount of the fine prescribed for the offence.

(2) The Commissioner may compound an offence under this section only if the person concerned admits in writing that the person has committed the offence.

(3) Where the Commissioner compounds an offence under this section, the order referred to in subsection (1)-

(a) shall be in writing, specify the offence committed, the sum of money to be paid, and the date for payment, and have attached the written admission referred to in subsection (2);

(b) shall be served on the person who committed the offence;

(c) is final and not subject to any appeal; and

(d) may be enforced in the same manner as an order of the High Court for the payment of the amount stated in the order.

(4) Where the Commissioner compounds an offence under this section, the person concerned is not liable for a penalty under Subdivision A or prosecution under Subdivision B with respect to that offence.

Sec. 291. Transfer to the Director of Public Prosecutions

The Commissioner may transfer information about a person to the Director of Public Prosecutions to enable the Director to bring charges against the person in respect of an offence under Subdivision B.

Sec. 292. Venue

Any proceedings with respect to an offence or in recovery of tax under Subdivision B, C, or D shall be commenced, heard, and disposed of at the court with competent jurisdiction nearest to-

(a) the usual place of abode of the person who is charged with the offence or from whom recovery is sought, as the case requires; or

(b) the office of the Commissioner having primary responsibility for the person's affairs under this Act.

Sec. 293. Tax Payable and Proof of Tax Payable

(1) The date on which tax is due or due and payable is not affected by the institution of proceedings with respect to an offence or in recovery of tax under Subdivision B, C, or D.

(2) In proceedings with respect to an offence or in recovery of tax under Subdivision B, C, or D, the production of a certificate signed by the Commissioner stating the name and address of the person liable and the amount of tax due or due and payable by the person is sufficient evidence of the amount of tax due or due and

payable by the person, as the case requires.

Division VI: Remission and Refund

Sec. 300. Remission

(1) The Minister may remit in whole or in part any tax that is due by a person where the Commissioner certifies in writing to the Minister that the Commissioner is satisfied that the tax cannot be effectively collected.

(2) The Commissioner may remit in whole or in part any penalty charged under Subdivision A where the person liable for the penalty shows good cause.

Sec. 301. Refunds and Set-Off

(1) Where tax credits available to a person for a tax year exceed the person's income tax payable under section 1(1)(a) and (b) for the year or where the Commissioner is otherwise satisfied that a person has paid tax in excess of the person's tax liability, the Commissioner shall-

(a) apply the excess in reduction of any tax due but unpaid by the person under this Act; and

(b) refund the remainder, if any, to the person.

(2) Interest paid by a person under section 252 shall be refunded to the person to the extent that the tax to which the interest relates is found not to have been payable.

(3) A person may apply to the Commissioner in writing for a refund under subsection (1) within three years of the later of-

(a) the end of the tax year during which the events occurred that gave rise to the payment of the excess; or

(b) the date on which the excess was paid.

(4) The Commissioner shall serve the person with written notice of the Commissioner's decision on an application under subsection (3).

(5) Where the Commissioner refunds an amount of tax to a person, whether by reason of court order or otherwise, the Commissioner is liable to pay the person interest at the statutory rate, compounded monthly, for the period-

(a) where the refund relates to excess tax credits available to a person for a tax year, commencing on the date for filing a return of income for the year under section 235 and ending on the day the refund is made; and

(b) in any other case, commencing on the date the person paid the tax to be refunded and ending on the day the refund is made.

PART VI: ADMINISTRATION

Division I: Officers of the Income Tax Service

Sec. 305. Commissioner and Other Officers

(1) On the recommendation of the Government, including as to terms and conditions of appointment, the Minister shall appoint as officers of the Income Tax Service-

(a) a Commissioner of Income Tax (the "Commissioner");

(b) Deputy Commissioners and Assistant Commissioners of Income Tax; and

(c) such other persons as may be necessary for the administration of this Act.

(2) The Commissioner is responsible for the administration of this Act including the assessment and collection of all tax due and payable to the Government and shall pay all tax collected into the Consolidated Fund.

(3) The Commissioner may not delegate the power to-

(a) compound an offence under section 290; or

(b) remit interest or penalties under section 300(2).

(4) Subject to subsection (3), the Commissioner may delegate to-

(a) any Deputy Commissioner of Income Tax or Assistant Commissioner of Income Tax-

(i) the power to extend the date on which tax is due and payable under section 206(4) or to stay the payment of tax pending an objection or appeal under section 326(5), 330(5), or 331(3);

(ii) the authorisation of an officer under section 320 or the issuing of a notice under section 321; and

(iii) this power of delegation other than with respect to matters referred to in this paragraph or subsection (3); and

(b) any officer of the Income Tax Service, any duties, powers, and functions conferred or imposed on the Commissioner under this Act that are not mentioned in paragraph (a) or subsection (3).

Division II: Official Documentation

Sec. 310. International Agreements

(1) To the extent that the terms of an international agreement to which Symmetrica is a party are inconsistent with the provisions of this Act, apart from subsection (5) and Subdivisions D and E of Division II of Part II, the terms of the agreement prevail over the provisions of this Act.

(2) This subsection applies where the Commissioner receives a request pursuant to an international agreement from the competent authority of another country for the collection in Symmetrica of an amount payable by a person (the "tax debtor") under the tax laws of the other country.

(3) Where subsection (2) applies, the Commissioner may, by service of a notice in writing, require the tax debtor to pay the amount to the Commissioner by the date specified in the notice and for transmission to the competent authority.

(4) This subsection applies where an international agreement provides Symmetrica will exempt income or a payment or subject income or a payment to reduced tax.

(5) Where subsection (4) applies, the exemption or reduction is not available to any entity-

(a) who, for the purposes of the agreement, is a resident of the other contracting state; and

(b) 50 percent or more of whose underlying ownership is owned by individuals or entities in which no individual has an interest who, for the purposes of the agreement, are not residents of the other contracting state or Symmetrica.

Sec. 311. Regulations

The Minister may make regulations-

(a) for matters authorised to be made or prescribed under this Act by regulation;

(b) amending any monetary amount set out in this Act; and

(c) for the better carrying into effect of the principles and purposes of this Act.

Sec. 312. Practice Notes

(1) To achieve consistency in the administration of this Act and to provide guidance to persons affected by this Act, including officers of the Income Tax Service, the Commissioner may issue in writing practice notes setting out the Commissioner's interpretation of this Act.

(2) A practice note is binding on the Commissioner until revoked.

(3) A practice note is not binding on persons affected by this Act.

(4) The Commissioner shall make practice notes available to the public at offices of the Income Tax Service and at such other locations or by such other medium as the Commissioner may determine.

Sec. 313. Private Rulings

(1) The Commissioner may, on application in writing by a person, issue to the person, by notice in writing served on the person, a private ruling setting out the Commissioner's position regarding the application of this Act to the person with respect to an arrangement proposed or entered into by the person.

(2) Where prior to the issue of a ruling under subsection (1), the person makes-

(a) a full and true disclosure to the Commissioner of all aspects of the arrangement relevant to the ruling; and

(b) the arrangement proceeds in all material respects as described in the person's application for the ruling, the ruling is binding on the Commissioner with respect to the application of this Act (as in force at the time of the ruling) to the person with respect to the arrangement.

(3) Where there is any inconsistency between a practice note and a private ruling, priority is given to the terms of the private ruling.

Sec. 314. Form of Documentation

(1) The Commissioner may from time to time specify the form of documents required under this Act, which forms shall contain such information as is required by this Act, by regulations made under this Act, and for the efficient administration of this Act.

(2) The Commissioner shall make the forms referred to in subsection (1) available to the public at offices of the Income Tax Service and at such other locations or by such other medium as the Commissioner may determine.

Sec. 315. Tax Identification Number

(1) For the purposes of identifying persons liable to tax under this Act, the Commissioner may, by service of a notice in writing, issue persons with a number to be known as a tax identification number.

(2) The Commissioner may require persons to show their tax identification number in any claim, notice, return, statement, or other document used for the purposes of this Act.

Sec. 316. Service of Documents

A document to be served on a person under this Act is considered sufficiently served if-

(a) where the person is to be served by the Commissioner and the person has notified the Commissioner in writing of an

address for service under this Act, including a fax number or electronic-mail address, left at or sent to the address;

(b) handed to the person or, in the case of an entity, a manager of the entity; or

(c) left at or sent by post to the usual or last known place of abode, business, office, or other address of the person.

Sec. 317. Defective Documents

(1) A document issued by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised officer of the Income Tax Service, is signed, printed, stamped, or written on the document.

(2) A document issued under this Act is not invalid or defective if-

(a) it is in substance and effect in conformity with the Act; and

(b) the person to whom the document is addressed or to whom it applies is designated in the document according to common understanding.

(3) Where a document issued by the Commissioner under this Act contains a defect that does not involve a dispute as to the interpretation of this Act or facts involving a particular person, the Commissioner may, for the purposes of rectifying the defect, amend the document.

Division III: Audit and Information Collection

Sec. 320. Commissioner's Access to Information

(1) For the purposes of administering this Act, the Commissioner and every officer of the Income Tax Service authorised in writing by the Commissioner-

(a) shall have at all times and without any prior notice full and free access to any premises, place, document, or other asset;

(b) may make an extract or copy, including an electronic copy, of any document to which access is obtained under paragraph (a);

(c) may seize any document that, in the opinion of the Commissioner or authorised officer, affords evidence that may be material in determining the tax liability of any person under this Act; and

(d) may, where a copy of a document is not provided on request by a person having access to the document, seize an asset to which access is obtained under paragraph (a) that the Commissioner or authorised officer reasonably suspects contains or stores the document in any form.

(2) In exercising powers under subsection (1), an officer shall, on request, produce the authorisation referred to in that subsection to an occupier of the premises or place or a person having access to the document or asset to which the exercise of powers relates.

(3) On request by the Commissioner or an authorised officer, an occupier of the premises or place or a person having access to the document or asset to which an exercise of powers under subsection (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the powers.

(4) The Commissioner may retain-

(a) any document seized under subsection (1)(c) for as long as is required to determine the person's tax liability or for any proceedings under this Act; and

(b) any asset seized under subsection (1)(d) for as long as is necessary to obtain access to the document, which document may be retained in accordance with paragraph (a).

(5) A person whose documents or assets are retained under subsection (4) may examine them and, in the case of

documents, make copies or extracts from them, at the person's expense, during regular office hours under such supervision as the Commissioner may determine.

(6) The Commissioner or authorised officer may request the assistance of the police when exercising powers under subsection (1).

(7) This section has effect notwithstanding any rule of law relating to privilege or the public interest with respect to the production of or access to documents.

(8) For the purposes of this section, "occupier" in relation to premises or a place means the owner, manager, or any other person on the premises or place.

Sec. 321. Notice to Obtain Information

(1) The Commissioner may, by service of a notice in writing, require a person, whether or not liable for tax under this Act-

(a) to produce, including by way of creation of a document, within the time specified in the notice, any information that is described with reasonable certainty in the notice;

(b) to attend at the time and place designated in the notice for the purposes of being examined on oath by the Commissioner or by an officer of the Income Tax Service authorised in writing by the Commissioner concerning the tax affairs of the person or any other person; or

(c) to produce at an examination of the person under paragraph (b) and for the purposes of that examination any document in the control of the person that is described with reasonable certainty in the notice.

(2) Any person to be examined on oath under subsection (1)(b) is entitled to legal or other representation throughout the examination.

(3) A notice under subsection (1) shall be served by delivery of the notice by hand to the person to whom it is directed or leaving the notice at the person's last and usual place of business or abode.

(4) This section has effect notwithstanding any rule of law relating to privilege or the public interest with respect to the production of or access to documents.

Sec. 322. Official Secrecy

(1) Every officer of the Income Tax Service shall-

(a) regard and deal with all documents and information coming into the officer's possession or knowledge in connection with the performance of duties under this Act as secret; and

(b) not disclose such documents or information to a court, tribunal, or other person except as provided for in subsection (2) and (3).

(2) An officer of the Income Tax Service may disclose a document or information referred to in subsection (1)-

(a) to the extent required in order to perform the officer's duties under this Act;

(b) where required by a court or tribunal in relation to administrative review or proceedings with respect to a matter under this Act;

(c) to the Minister;

(d) where the disclosure is necessary for the purposes of any other fiscal law of Symmetrica;

(e) to any person in the service of the Government in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties;

(f) to the Auditor-General or any person authorised by the Auditor-General where such disclosure is necessary for

the performance of official duties; or

(g) to the competent authority of the government of another country with which Symmetrica has entered into an international agreement, to the extent permitted under that agreement.

(3) Any person, court, tribunal, or authority receiving documents and information under subsection (2) is required to keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purposes for which the disclosure is permitted.

Division IV: Administrative Review

Subdivision A: Objections

Sec. 325. Reviewable Decisions

(1) For the purposes of this Act, the following are reviewable decisions:

(a) a decision by the Commissioner on an application by a person to extend the date on which tax is due and payable under section 206(4);

(b) an estimate by the Commissioner, or the decision to make an estimate, of a person's estimated tax payable under section 231(7);

(c) a decision by the Commissioner to require a person to file a return of income under section 235(5) or 236;

(d) a decision by the Commissioner on an application by a person to extend the due date by which the person must file a return of income under section 237;

(e) an assessment of income tax payable by a person under section 240, 241, or 242 or interest and penalties payable by a person under section 255;

(f) a decision by the Commissioner to make an assessment of income tax payable by a person under section 241(2);

(g) notification by the Commissioner of an amount to be set aside by a person as a receiver under section 281(2);

(h) a decision by the Commissioner to require a person to pay monies owing to a tax debtor to the Commissioner under section 282(2);

(i) a decision by the Commissioner to require a person to pay tax on behalf of a non-resident person under section 283(1) or (3);

(j) a certificate signed by the Commissioner under section 293(2);

(k) a decision by the Commissioner on an application by a person for a refund of tax under section 301(4);

(l) a private ruling issued by the Commissioner under section 313; and

(m) a decision by the Commissioner on an application by a person for an extension of time within which to file an objection under section 326(3).

(2) A reviewable decision is treated as made-

(a) in the case of an assessment of income tax payable by a person under section 240, on the day the assessment is treated as made; and

(b) in any other case, on the day when the person is served with the notice of the decision.

(3) Where the Commissioner fails to serve a person making an application under section 206(4), 237, 301(3), 313, or 326(3) with the required notice of the decision within 30 days of the application being made, the person may, by notice in writing filed with the Commissioner, elect to treat the Commissioner as having decided to refuse the application.

(4) Where a person makes an election under subsection (3), the Commissioner is treated as having refused the application and served the person with the required notice to that effect on the day the election is filed.

(5) A person may challenge or seek

administrative review of a reviewable decision only under the objection and appeal procedure in this Division and in any such challenge or review the burden of proof is on the person to show the decision is incorrect.

Sec. 326. Objection to Reviewable Decision

(1) A person who is aggrieved by a reviewable decision may file an objection to the decision with the Commissioner within 60 days after the decision is made.

(2) An objection must be in writing and specify in detail the grounds on which it is made.

(3) On application in writing filed with the Commissioner by a person who is aggrieved by a reviewable decision, the Commissioner-

(a) may, where reasonable cause is shown, extend for a period not exceeding 60 days the date by which an objection must be filed by the person under subsection (1); and

(b) shall serve the person with written notice of the Commissioner's decision on the application.

(4) Subject to subsection (5), the operation and enforcement of a reviewable decision is not stayed or otherwise affected by the filing of an objection under subsection (1).

(5) For the purposes of securing the effectiveness of an objection filed under subsection (1), on application in writing by the person who made the objection filed with-

(a) the Commissioner, the Commissioner may; or

(b) the Registrar of the Income Tax Tribunal, the Income Tax Tribunal may, stay or otherwise affect the operation or enforcement of a reviewable decision pending the outcome of the objection.

(6) After consideration of a person's objection filed under subsection (1), the Commissioner-

(a) may allow the objection in whole or part by amending the reviewable decision or disallow the objection (the "objection decision"); and

(b) shall serve the person with written notice of the objection decision.

(7) Where the Commissioner fails to serve a person with notice of an objection decision within 60 days of an objection being filed under subsection (1), the person may, by notice in writing filed with the Commissioner, elect to treat the Commissioner as having made a decision to disallow the objection.

(8) Where a person makes an election under subsection (7), the Commissioner is treated as having disallowed the objection and served the person with notice of the objection decision to that effect on the day the election is filed.

Subdivision B: Appeal

Sec. 330. Appeal to Income Tax Tribunal

(1) A person (the "appellant") who is aggrieved by an objection decision may file a notice of appeal with the Registrar of the Income Tax Tribunal within 60 days after notice of the objection decision is served in accordance with section 326(6) or (8).

(2) On application in writing filed with the Registrar of the Income Tax Tribunal by a person who is aggrieved by a reviewable decision or an objection decision, the Income Tax Tribunal may, where reasonable cause is shown, extend the period-

(a) under section 326(1) by which the person must file an objection; or

(b) under subsection (1) by which the person must file a notice of appeal.

(3) A person who files a notice of appeal under subsection (1) or an application under subsection (2) shall, within five days of doing so, file a copy of the notice or application with the Commissioner.

(4) Subject to subsection (5), the operation and enforcement of an objection decision is not stayed or otherwise affected by the filing of a

notice of appeal under subsection (1).

(5) For the purposes of securing the effectiveness of an appeal filed under subsection (1), on application in writing by the appellant filed with-

(a) the Commissioner, the Commissioner may; or

(b) the Registrar of the Income Tax Tribunal, the Income Tax Tribunal may, stay or otherwise affect the operation or enforcement of an objection decision pending the outcome of the appeal.

(6) The Registrar of the Income Tax Tribunal shall give not less than 15 days notice to the parties before the date fixed for hearing of an appeal or application under this section.

(7) In an appeal filed under subsection (1), the appellant is limited to the grounds set out in the objection filed under section 326(1), unless the Income Tax Tribunal grants the appellant leave to add new grounds.

(8) In deciding an appeal filed under subsection (1), the Income Tax Tribunal shall determine facts that are relevant to the objection decision under review and may, in a manner consistent with the application of this Act to those facts-

(a) in the case of a decision with respect to tax payable, affirm, reduce, increase, or vary the amount payable;

(b) in any case, affirm, cancel, exercise, or vary any discretion, power, or right vested by this Act in the Commissioner; or

(c) in any case, remit the decision to the Commissioner for reconsideration in accordance with the directions or recommendations of the Tribunal.

Sec. 331. Appeal to High Court

(1) Where the appellant or the Commissioner is dissatisfied with a decision of the Income Tax Tribunal made under section 330(8), that person may file a notice of appeal with the Registrar of the High Court within 60 days after being notified of the decision or such further period as the High Court may allow.

(2) Subject to subsection (3), the operation and enforcement of a decision of the Income Tax Tribunal under section 330(8) is not stayed or otherwise affected by the filing of a notice of appeal under subsection (1).

(3) For the purposes of securing the effectiveness of an appeal filed under subsection (1), on application in writing by the person who filed the appeal, which application is filled with-

(a) the Commissioner, the Commissioner may; or

(b) the Registrar of the High Court, the High Court may, stay or otherwise affect the operation or enforcement of a decision of the Income Tax Tribunal under section 330(8) pending the outcome of the appeal.

(4) In deciding an appeal filed under subsection (1), the High Court may only review the application of the law by the Income Tax Tribunal to the facts as found by the Tribunal.

(5) An appeal filed under subsection (1) shall be conducted in accordance with procedures specified in the Rules of the High Court.

Subdivision C: Income Tax Tribunal

Sec. 335. Establishment and Jurisdiction

(1) The Income Tax Tribunal is established.

(2) The Income Tax Tribunal has jurisdiction to hear and determine applications and appeals in accordance with sections 326 and 330.

Sec. 336. Membership

(1) The Income Tax Tribunal shall-

(a) consist of not more than ten members, being individuals appointed by the President acting in accordance with the advice of the Prime Minister;

(b) by majority vote of members appoint one of its members to be

Chairperson; and

(c) be assisted by a Registrar appointed by the Minister.

(2) Members of the Income Tax Tribunal shall-

(a) subject to paragraph (c), hold office for a term of five years and are eligible for reappointment;

(b) subject to paragraphs (a) and (c), hold office on such terms and conditions, including as to remuneration, as prescribed by the regulations; and

(c) cease to hold office if they are or become the holder of any other public office or have been or are convicted of any offence involving moral turpitude.

(3) No action, suit, prosecution, or any other proceeding may be brought or instituted personally against an individual who is or was a member of the Income Tax Tribunal in respect of-

(a) any act done in good faith in the discharge of any function under this Act as such a member; or

(b) such an act that in good faith is or was omitted to be done.

(4) A member of the Income Tax Tribunal who has a material, pecuniary, or other interest that may conflict with the proper performance of the member's functions shall-

(a) where the interest may conflict with any hearing of the Tribunal in which the member is involved, disclose the interest to the parties to the hearing and not take part in the hearing unless all parties agree on the member's participation; and

(b) in any case, disclose the interest to the Minister.

Sec. 337. Powers and Procedure

(1) Subject to this Subdivision, the authorised activities of the Income Tax Tribunal shall be conducted in accordance with any rules of practice and procedure established by the Tribunal, which rules may adopt, in whole, part, or modified form, any rules of practice and procedure of any court.

(2) In conducting authorised activities, the Income Tax Tribunal-

(a) may take and require evidence to be given by any method by which a court of record may take or require evidence to be given including by way of summoning a person to attend before the Tribunal, filing of an affidavit, or the production of documents;

(b) despite paragraph (a), is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks appropriate;

(c) may, in the same manner as a court of record, find a person guilty of contempt of the Tribunal;

(d) may make an order as to costs; and

(e) shall have such assistance in carrying out and enforcing its decisions, orders, and any other judicial process as is available to the High Court.

Sec. 338. Hearings

(1) Hearings of the Income Tax Tribunal shall be-

(a) conducted with a view to maximising the convenience of the parties and minimising expense, formality, and technicality;

(b) conducted at times and places specified by the Chairperson;

(c) conducted by-

(i) in any case provided for by the rules specified under section 337(1), a single member of the Tribunal nominated by the Chairperson; and

(ii) in any other case, three members of the Tribunal nominated by the Chairperson;

(d) presided over by the member of the Tribunal conducting the

hearing or, in a case referred to in paragraph (c)(ii), the Chairperson or the member nominated by the Chairperson; and

(e) open to the public unless the Chairperson orders otherwise.

(2) In a hearing before the Income Tax Tribunal, a barrister, a solicitor, or an accountant may represent parties to the hearing.

Sec. 339. Decisions

(1) A decision on a hearing of the Income Tax Tribunal shall-

(a) be made as quickly as practicable;

(b) be in writing and signed by the Chairperson or other member who presided over the hearing;

(c) include a statement as to the Tribunal's findings of fact or opinion (that are material to the decision) and the application of the law to the facts; and

(d) be notified to the parties.

(2) Subject to subsection (4), decisions of the Income Tax Tribunal and evidence received by it, including a transcript of hearings, are public records open to inspection by the public.

(3) Subject to subsection (4), the Income Tax Tribunal shall provide for the publication of its decisions in such form and manner as may be adapted for public information and use, and such authorised publication is evidence of the decisions of the Tribunal in all courts of Symmetrica without any further proof or authentication.

(4) The Income Tax Tribunal shall ensure that in releasing or allowing access to information under subsections (2) and (3) measures are taken to prevent the disclosure of trade secrets or other confidential information.

PART VII: INTERPRETATION AND CITATION

Sec. 345. Definitions

For the purposes of this Act, unless otherwise provided or the context otherwise requires-

"accrual basis" with respect to accounting for income tax purposes has the meaning in section 48;

"acquisition" of an asset has the meaning in section 77;

"amended assessment" means an assessment amended in accordance with section 242;

"amount derived" has the meaning in section 41;

"approved retirement fund" has the meaning in section 190;

"arrangement" includes any action, agreement, course of conduct, promise, transaction, understanding, or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person;

"assessable income" has the meaning in section 15;

"assessment" means an assessment under sections 240, 241, 242, or 255 but excludes an assessment that has been replaced with an amended assessment under section 242;

"asset" has the meaning in section 76;

"associate" has the meaning in section 107;

"attributable income"-

(a) of a trust has the meaning in section 131; and

(b) of a controlled foreign company has the meaning in section 156;

"authorised activities" of the Income Tax Tribunal means any activity of the Tribunal that is authorised by this Act;

"beneficiary" with respect to an entity has the meaning in section 106;

"business" includes-

(a) a trade, profession, vocation, or isolated arrangement with a business character; and

(b) a past, present, or prospective business, but excludes employment;

"business asset" has the meaning in section 76;

"capital contribution" with respect to an entity has the meaning in section 165;

"cash basis" with respect to accounting for income tax purposes has the meaning in section 47;

"Chairperson" with respect to the Income Tax Tribunal has the meaning in section 336;

"class" of depreciable assets is determined in accordance with section 85;

“collateral benefit” with respect to a distribution by an entity has the meaning in section 165;

"Commissioner" has the meaning in section 305;

"company" has the meaning in section 105;

“consumption costs” has the meaning in section 25;

"contributed capital" of an entity is the total of capital contributions to the entity less any repayments of capital made by the entity;

"controlled foreign trust" and "controlled foreign company" have the meanings in section 105;

"cost" of and "cost incurred" by a person have the meaning in section 41;

"debt claim" has the meaning in section 76;

"debt obligation" has the meaning in section 78;

"deducted" with respect to an amount in calculating income has, for the purposes of Division II of Part II and the definition of "foreign source" and "source" only, the meaning in section 42;

"dependant" of an individual with respect to a tax year means a relative of the individual who-

(a) has taxable income for the year that does not exceed SY 250; and

(b) receives substantial support from the individual during the whole year for the necessities of life;

"depreciable asset" has the meaning in section 76;

"depreciation basis" at the end of a tax year with respect to a pool of depreciable assets, has the meaning in section 86;

"derive" with respect to an amount or payment has the meaning in section 41;

“distribution” and "distribute" by an entity

have the meaning in section 165;

"distribution of profits" with respect to a distribution by an entity has the meaning in section 165;

"dividend" of a company has the meaning in section 141;

"document" means a statement in writing, includes an account, assessment, book, certificate, claim, note, notice, order, record, return, or ruling, and may take an electronic form;

"domestic asset" has the meaning in section 76;

"domestic liability" has the meaning in section 78;

"due" and "due and payable" with respect to tax have the meanings in section 206;

"employee" means an individual who is the subject of an employment conducted by an employer;

"employer" means a person conducting the employment of an individual and includes a person who has conducted or has the prospect of conducting the employment of an individual;

"employment" means-

(a) a position of an individual in the employ of another person;

(b) a position of an individual as manager of an entity other than as partner of a partnership;

(c) a position of an individual entitling the individual to a periodic remuneration in respect of services performed; and

(d) a public office held by an individual, and includes a past, present, or prospective employment;

"entitled" and "entitlement" with respect to receipt of a payment are interpreted in light of section 41;

"entity" has the meaning in section 105;

"estimated tax payable" with respect to an instalment payer has the meaning in section 231;

"excluded costs" has the meaning in section 25;

"exempt amount" means a payment or an amount exempt from income tax by reason of section 20, 142, or 192;

"exempt organisation" has the meaning in section 20;

"final withholding payment" has the meaning in section 222;

"finance lease" has the meaning in section 67;

"financial institution" means-

(a) a bank regulated under the Banking Act;

(b) an insurance company regulated under the Insurance Act; or

(c) any other entity prescribed by the regulations;

"foreign branch" has the meaning in section 105;

"foreign branch income" and "foreign branch loss" have the meanings in section 147;

"foreign currency asset " has the meaning in section 76;

"foreign currency liability" has the meaning in section 78;

"foreign income tax"-

(a) means income tax imposed by a foreign country and includes a final withholding tax or branch profits tax imposed by a foreign country;

(b) excludes-

(i) a tax designed to reduce income tax that might otherwise be imposed by the country of a person's residence; or

(ii) tax to the extent to which is has been reduced, refunded, or otherwise compensated for; and

(c) is interpreted in light of section 175;

"foreign source" with respect to income, a loss, amounts included or deducted in calculating income, or a payment has, subject to section 175, the meaning in section 68;

"foreign tax offset" has the meaning in section 200;

"foreigner's Symmetrican branch" has the meaning in section 105;

"gain"-

(a) from the realisation of an asset or liability has the meaning in section 75;

(b) from an interest in an unapproved retirement fund has the meaning in section 193; and
(c) from investment insurance has the meaning in section 184;

"general insurance" and "general insurance business" have the meanings in section 180;

"gift" means a payment without consideration or a payment with consideration to the extent the market value of the payment exceeds the market value of the consideration and for the purposes of this definition a payment may consist of the market value of a loss transferred under section 33(1)(c) or foreign income tax transferred under section 200(3)(b);

"hearings" of the Income Tax Tribunal means the hearing of applications and appeals under sections 326 and 330;

"incapacitated individual" has the meaning in section 105;

"included" with respect to an amount in calculating income has, for the purposes of Division II of Part II and the definition of "foreign source" and "source" only, the meaning in section 42;

"income"-
(a) from a business has the meaning in section 17;
(b) from an employment has the meaning in section 16;
(c) from an investment has the meaning in section 18; and
(d) generally means a person's income from any employment, business, or investment and an aggregation of such income as calculated in accordance with this Act;

"income tax" payable under this Act has the meaning in section 1;

"Income Tax Service" means the government agency of that name;

"Income Tax Tribunal" means the Tribunal established under section 335;

"incomings" for an asset or liability has the meaning in section 81;

"incur" with respect to a cost, has the meaning in section 41 and, with respect to a liability, has the meaning in section 79;

"instalment payer" has the meaning in section 230;

"instalment sale" has the meaning in section 67;

"insurance", "insurance business", "insured", and "insurer" have the meanings in section 180;

"interest"-
(a) in an entity has the meaning in section 106; and
(b) otherwise means a payment for the use of money and includes-
(i) a payment made or accrued under a debt obligation that is not a repayment of capital;
(ii) any gain realised by way of a discount, premium, swap payment, or similar payment; and
(iii) amounts treated as interest under section 67;

"international agreement" means a treaty or other agreement with a foreign government that has entered into force in Symmetrica providing for-
(a) relief of international double taxation and the prevention of fiscal evasion; or
(b) reciprocal administrative assistance in the enforcement of tax liabilities;

"investment"-
(a) means the owning of one or more depreciable or investment assets-
(i) of a similar nature; or
(ii) that are used in an integrated fashion, on similar terms, and subject to similar conditions, including as to location, together with any liabilities incurred with respect to the assets;
(b) includes a past, present, or prospective investment; and
(c) excludes a business or employment;

"investment asset" has the meaning in section 76;

"investment insurance" and "investment

insurance business" have the meanings in section 180;

"investment final withholding payment" has the meaning in section 222;

"liability" has the meaning in section 78;

"lease" means an asset owned by one person constituted by a temporary right in respect of an asset of another person, other than money, and includes a licence, profit-a-prendre, option, rental agreement, royalty agreement, or tenancy;

"loan" means an asset owned by one person constituted by a debt claim that is not payable until the happening of a future event or a future time;

"long-term contract" has the meaning in section 50;

"loss"-

(a) from any business or investment has the meaning in section 33; and

(b) from the realisation of an asset or liability has the meaning in section 75;

"made" with respect to a payment is interpreted in light of sections 45 and 60;

"manager" with respect to an entity has the meaning in section 106;

"market value" is determined in accordance with section 56;

"medical costs" incurred in respect of an individual means costs incurred in the medical treatment of the individual and premiums paid for medical insurance of the individual but excludes costs incurred in conducting any insurance business;

"medical costs offset" has the meaning in section 116;

"member" of the Income Tax Tribunal has the meaning in section 336;

"Minister" means the Minister of Finance;

"minor" has the meaning in section 105;

"natural resource" means minerals, petroleum, or any other non-living or living resource that may be taken from land or the sea;

"natural resource payment" means any payment, including a premium or like amount-

(a) for the right to take natural resources from land or the sea; or

(b) calculated in whole or part by reference to the quantity or value of natural resources taken from land or the sea;

"net incomings" for a liability to a particular time means the amount by which cumulative incomings for the liability exceed cumulative outgoings for the liability to the time;

"net outgoings" for an asset or liability to a particular time means the amount by which cumulative outgoings for the asset or liability exceed cumulative incomings for the asset or liability to the time;

"non-resident" with respect to a person has the meaning in section 108;

"notice of assessment" means a notice served under section 243 or 255(4);

"objection decision" has the meaning in section 326;

"obligation" and "obliged" with respect to making a payment are interpreted in light of section 41;

"officers" of the Income Tax Service has the meaning in section 305;

"offset" means a personal offset, medical costs offset, or foreign tax offset;

"outgoings" for an asset or liability has the meaning in section 80;

"ownership" of an asset is interpreted in light of sections 77, 120, 130, 140, and 145;

"partner" has the meaning in section 106;

"partner's share" has the meaning in section 122;

"partnership" has the meaning in section 105;

"partnership income" and "partnership loss" have the meanings in section 121;

"pay", "payable", "payee", "payer", and "payment"-

(a) have the meanings in section 41; and

(b) with respect to tax payable under this Act, are also interpreted in light of section 205;

"penalty" means a penalty imposed under Subdivision A of Division V of Part V;

"permanent establishment" means a place where a person carries on business, and includes-

(a) a place where a person is carrying on business through an agent,

other than a general agent of independent status acting in the ordinary course of business as such;

(b) a place where a person has, is using, or is installing substantial equipment or substantial machinery; and

(c) a place where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project;

"person" has the meaning in section 105;

"personal offset" has the meaning in section 115;

"pools" of depreciable assets of a person for a tax year has the meaning in section 85;

"premium" with respect to insurance has the meaning in section 180;

"proceeds" with respect to insurance has the meaning in section 180;

"realisation" of an asset or liability has the meaning in section 82;

"receive" and "receipt" with respect to a payment are interpreted in light of sections 45 and 60;

"Registrar" of the Income Tax Tribunal means the individual appointed to that position under section 336;

"regulations" means regulations made under section 311;

"relative" of an individual has the meaning in section 107;

"rent" means any payment made by the lessee under a lease of a tangible asset including any premium and any other payment for the granting of the lease but excludes a natural resource payment;

"repatriated income" of a foreign branch has the meaning in section 146;

"residence" or "resident" with respect to a person is determined in accordance with sections 108, 109, and 110;

"retirement contribution" has the meaning in section 190;

"retirement fund" has the meaning in section 190;

"retirement payment" has the meaning in section 190;

"repayment of capital"-

(a) with respect to a distribution by an entity has the meaning in section 165; and

(b) with respect to a debt claim or debt obligation means the payment or repayment of an amount derived by the holder of the obligation under the obligation that represents incomings for the obligation;

"return of income" has the meaning in section 235;

"reviewable decision" has the meaning in section 325;

"royalty" means any payment made by the lessee under a lease of an intangible asset including payments for-

(a) the use of, or the right to use, a copyright, patent, design, model, plan, secret formula or process, or trademark;

(b) the supply of know-how;

(c) the use of, or right to use, a cinematography film, video tape, sound recording, or any other like medium;

(d) the supply of assistance ancillary to a matter referred to in paragraphs (a) to (c); or

(e) a total or partial forbearance with respect to a matter referred to in paragraphs (a) to (d), but excludes a natural resource payment;

“service” of a document is interpreted in light of section 316;

"service fee" means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a business of a person;

"shareholder" has the meaning in section 106;

"source" with respect to income, a loss, amounts included or deducted in calculating income, or a payment has, subject to section 175, the meaning in section 68;

"statutory rate" in relation to a tax year means the Bank of Symmetrica discount rate at the commencement of the year;

"tax" has the meaning in section 205;

"tax credit" means a tax credit available under section 223, 230, or 241;

"tax payable on an assessment" has the meaning in sections 240, 241, and 242;

"taxable income" has the meaning in section 10;

"taxable investment income" of a resident minor has the meaning in section 117;

"tax identification number" has the meaning in section 315;

"tax year" has the meaning in section 40;

"temporarily resident" with respect to an individual has the meaning in section 109;

"trading stock" has the meaning in section 76;

"trust" has the meaning in section 105;

"trustee" has the meaning in section 106;

"unallocated income" of a controlled foreign trust or company has the meaning in section 156;

"unapproved retirement fund" has the meaning in section 190;

"underlying ownership"-

(a) in relation to an entity, means interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has an interest; or

(b) in relation to an asset owned by an entity, is determined as though the asset is owned by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

"underlying obligation" in relation to a liability owed by an entity, is determined as though the liability is owed by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

"withholdee" means a person receiving or entitled to receive a payment from which income tax is required to be withheld under Subdivision A of Division II of Part V;

"withholding agent" means a person required to withhold income tax from a payment under Subdivision A of Division II of Part V or who elects to withhold income tax under section 213; and

"written down value" of a pool of depreciable assets-

(a) at the end of a tax year has the meaning in section 87(4);

(b) at a particular time ("the time") during a tax year means-

(i) the written down value of the pool at the end of the previous tax year; plus

(ii) outgoings added to the depreciation basis of the pool during the tax year or to be added during the following tax year under section 86(5) in respect of costs incurred during the tax year but prior to the time; less

(iii) incomings-

(a) derived during the tax year; or

(b) to be derived with respect to a realisation occurring, prior to the time in respect of assets that are or have been in the pool.

Sec. 346. Citation

This Act may be cited as the Income Tax Act 20**.

PART VIII: TRANSITIONAL

Sec. 350. Repeal

(1) The following laws and any regulations, rules, or other subsidiary legislation made under them are repealed (the "repealed legislation):Income Tax Act 19** Capital Gains Tax Act 19**

(2) Any right or privilege acquired by a person under the repealed legislation ceases to exist on the date this Act comes into effect under section 351 unless it is expressly provided in section 351 or in the regulations that the right or privilege is to remain in existence.

Sec. 351. Effective Date and Transition

(1) Subject to this section, this Act comes into effect for tax years commencing on or after 1 January 20**.

(2) The repealed legislation continues to apply for tax years prior to tax years in which this Act comes into effect.

(3) All appointments made under the repealed legislation and subsisting at the date this Act comes into effect are deemed to be appointments made under this Act.

(4) Any international agreement made by Symmetrica that is effective at the time this Act comes into effect continues to have effect under this Act.

(5) All blank forms and other documents used in relation to the repealed legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

(6) A reference in this Act to-

(a) a previous tax year includes, where the context requires, a reference to a tax year under the repealed legislation; and

(b) this Act or to a provision of this Act includes, where the context requires, a reference to the repealed legislation or to a corresponding provision of the repealed legislation, respectively.

(7) Division V of Part V (relating to non-compliance) applies to tax due and to offences committed on or after 1 January 20**.

(8) Division IV of Part VI (relating to administrative review) applies with respect to reviewable decisions made on or after 1 January 20**.

(9) Subject to section 40(4), (6), (7), and (8), a person whose tax year under the repealed legislation is a period of twelve months other than the calendar year is treated as having been granted approval by the Commissioner under section 40(3) to use that tax year under this Act.

(10) The Minister may make regulations with respect to transitional measures related to the implementation of this Act.

(11) For the purposes of this section, "repealed legislation" means the laws, regulations, rules, or other subsidiary legislation repealed by section 350.

COMMONWEALTH OF SYMMETRICA

COMMENTARY ON INCOME TAX ACT 20**

Table of Contents

BACKGROUND

1. The main purpose of this Commentary is to explain briefly the presentation and form of the Commonwealth of Symmetrica Sample Income Tax Law (the "Sample"). The Background to this Commentary is as much about explaining what the Sample is not as it is about explaining what it is. The Sample is an example of a relatively comprehensive income tax law and one particular drafting style. It is not an example of an ideal income tax, if it were possible to draft one in any case.

2. For example, there are many areas of income tax theory where experts do not agree. The taxation of income on a realisations basis is one as is whether the exemption or credit method should be used to provide foreign tax relief and the treatment of savings. Even in areas where experts do agree that a particular approach is correct in theory, many will further agree that the theoretically correct approach is not a practical one from an implementation perspective. The identification of where an in-kind benefit constitutes income (and is therefore included in calculating taxable income) or an expense constitutes human consumption (and is therefore not deductible) are two examples where a practical approach must be taken. Another is the level of control required to justify allocation of income of entities to their owners.

3. An income tax must be adapted to the circumstances in which it is to be applied. Different countries have different social values, different social structures, different levels of resources, and different government funding arrangements, including level of reliance on other forms of taxation. An ideal income tax for one country is unlikely to be ideal for another country. An income tax should be adapted to local conditions and can only be ideal in this sense.

4. The Sample is not adapted to any particular country's circumstances. One of its primary objectives is that it can readily be adapted for use by particular countries. The particular countries towards which it is targeted are developing countries with an Anglo-Saxon based legal system. However, it may also be of interest to other countries including developed countries engaged in tax simplification projects. The Anglo-Saxon influence is apparent on the face of the Sample and, particularly, the terminology used. Nevertheless, the Sample departs in many respects from the traditional United Kingdom approach to income tax. For example, the Sample does not adopt the traditional United Kingdom distinction between income and capital.

5. The Sample purports to be relatively complete and comprehensive. These two aspects require further explanation. It is complete in the sense that its provisions cover most all topics that should be treated in an income tax. Further, these provisions are fully cross-referenced and heavily integrated. It has been decided not to adopt a modular approach under which alternate provisions are provided demonstrating different approaches to a particular policy issue. Different approaches to particular policy issues invariably involve adjustment of more than one provision, which makes the modular approach very difficult, if not impossible, to present in a complete form. The Sample adopts only one policy approach to particular issues. This does not suggest that the approaches adopted are ideal or the best. Another of the purposes of this Commentary is to identify the policy options adopted and point out some different approaches.

6. The Sample also purports to be comprehensive. The tax base is broad and the exemptions limited. However, except in isolated cases, a realizations rather than accrual tax base is adopted. The Sample addresses many difficult tax base issues. Many of these issues are not even appropriately addressed by many developed countries, at least in legislative form. Examples of these types of issues are:

- tax base erosion by non-resident controlled entities by repatriation of profits through payments subject to

low-final withholding taxes (usually only directly addressed in the context of interest by thin capitalization rules);

- the treatment of long-term contracts (which involve the potential for tax deferral);
- the treatment of annuities, installment sales, and finance leases (consistently with interest paid on a loan);
- a comprehensive set of source rules covering income, losses, gains, and amounts included or deducted in calculating income (usually dealt with in part if at all);
- the coverage of liabilities under transactional basis (capital gains) treatment (which are often ignored in legislation); and
- value shifting between interests and liabilities held in entities (an issue either ignored or only dealt with in isolated cases).

7. It is not suggested that all countries need these rules or that they should adopt them as in the Sample. Rather, the purpose of the Sample is to demonstrate the issues that a country should consider when drafting or redrafting an income tax. In this way, the Sample serves as a useful checklist of things to be considered and provides but one example of how to address particular issues. Keen attention has been paid to structural issues. Too many countries' income tax laws are littered with provisions that appear under headings to which they do not relate and only cover part of the generic issue because that was the part that was initially causing a problem. They find later on that variations of the problem continue to arise because they did not address the issue from a structural perspective in the first place.

8. Some further general explanation is required with respect to the approach to drafting. Some will find the approach too complex and others will find that it is not sufficiently specific in particular places. In particular, those favouring a principles approach to drafting, such as that adopted by Continental Europe, may find the use of definitions overwhelming. However, such an approach typically assumes a particular legal system underpinning the income tax law and relies on that legal system to fill the gaps that the income tax law does not cover. Many countries, particularly developing countries, do not have a sufficiently sophisticated legal system such that it may be assumed that a particular issue will be appropriately covered by some other law, e.g. accounting law. The approach of the Sample is to assume the lack of a sophisticated legal system. It seeks to cover virtually all matters pertaining to the income tax law. That is, the Sample seeks to be self-standing.

9. Nevertheless, the Sample does not seek the level of sophistication adopted in many developed countries' income tax laws. Often this sophistication is superficial and only hides a poorly structured or drafted income tax, using a number of provisions to deal with issues that are dealt with by substantially fewer provisions in the Sample. In any case, as mentioned above at paragraph 4, the Sample is primarily targeted at developing countries where the sophistication often sought by developed countries is not justified.

10. Not only does the Sample seek to be comprehensive but it also seeks to be uniform. If it is possible to deal with a number of issues using only one concept, then the Sample does so. Again, this approach is lacking in many income tax laws. It is perhaps this goal of uniformity rather than that of comprehensiveness that has caused a lengthy general definitions section. The general definitions section is in many ways the map to the Sample. It is this section that ensures that singular concepts are used consistently throughout the Sample.

11. In most cases, the general definitions section does not define a term but directs the reader to the section where a particular term or phrase is defined. Where the meaning of a particular word or phrase is central to a particular Division or Subdivision, the term is often defined in a

central concepts section at the beginning of the Division or Subdivision. This approach is felt superior to one in which all definitions are collected in one definitions section. Placing related definitions within close proximity of one another provides a greater insight into the approach adopted by the Sample. If these related definitions were scattered throughout a very large definitions section, this advantage would be lost.

12. A further tool is provided in order to assist with navigation through the Sample and identification of defined terms and phrases. All terms and phrases appearing in the Sample that are intended to be used in the sense defined in the general definitions section are underlined. This is intended to alert the reader that a particular term or phrase is used in the defined sense. Finally, in the usual way, if a defined term is only used in one section, the term is defined at the end of that section and not in the general definitions section.

13. The section numbering used in the Sample is also worthy of short comment. It accepts the inevitability that income tax laws will be amended. In order to make provision for amendment, section numbers are reserved at various points throughout the Sample. The general approach is to begin each Part, Division, or Subdivision with a section number based on a multiple of five. This results in reserve section numbers at the end of each Part, Division, or Subdivision.

PART I: IMPOSITION OF INCOME TAX

14. The Sample begins with the charging provision, section 1. The charging provision is the central provision of the Sample from which the rest of the Sample branches. It is the only section that imposes income tax. The Sample distinguishes the imposition of income tax and other "tax" imposed by the Sample. "Tax" is defined in section 205 and includes not only amounts charged under section 1 but amounts charged under other provisions such as interest and penalties.

15. Income tax is imposed under section 1 for each "tax year". Amounts used in calculating income tax must, therefore, be allocated to specific tax years. This allocation process is primarily detailed by Subdivision B of Division II of Part II. The charging provision specifies that income tax payable is to be paid in accordance with the procedure in Part V.

16. Income tax is charged under four heads in section 1(1). The amount of income tax payable by a person for a tax year is the total of the amount payable under these heads for the year. The calculation process is different for each of these heads and is set out in the rest of the charging provision. The tax rates applicable follow in Division II. Income tax is imposed on a "person". "Person" is another central concept that is defined in section 105 to mean an individual or an entity (partnership, trust, company, or foreign branch). Income tax treatment varies dramatically under the four heads depending on whether the person deriving the income is an individual, an entity, or a non-resident person. The following discussion considers taxation under these income tax heads by reference to these different types of persons.

Individuals

17. The first head of charge to income tax is the traditional profits base. The concept of "taxable income" is used to represent profits. Taxable income is calculated in accordance with Division I of Part II, see the discussion below at paragraphs 33 to 96. Income tax payable under this head is primarily calculated under section 1(3) by applying the tax rates set out in section 5 to the relevant individual's taxable income. The resulting amount is reduced by "offsets" to arrive at tax payable. This term is defined in section 345 by reference to personal, medical costs, and foreign tax offsets. The policy underlying these offsets is discussed in the Commentary relevant to the sections under which these offsets are calculated, see the discussion below at paragraphs 218 to 222 and 311 to 316. Often an amount that reduces tax otherwise payable in this manner is

referred to as a "tax credit". The Sample only uses the term "tax credit" for what are effectively pre-payments of income tax made during the year on account of the end of year tax liability under the first head of charge to income tax. For example, tax credits are available for non-final withholding tax and tax paid by installment. Excess tax credits are refundable under the Sample, see section 301 and the discussion below at paragraph 365. By contrast, there is no provision for the refund of excess offsets but often they may be carried forward under the relevant calculation provision.

18. Section 1(4) is an exception to the calculation under section 1(3). This provision effectively turns wage withholding tax into a final withholding tax in certain circumstances. This has the administrative advantage of reducing, potentially dramatically, the number of returns of income that have to be filed with the tax administration. As soon as an employee has more than one source of income or claims deductions for payments made by the employee it becomes difficult for the employer to accurately determine the tax payable by the employee. This is one reason why employees are essentially denied deductions in calculating taxable income, see the discussion below at paragraph 69. Similarly, the final nature of the wage withholding tax is withdrawn where an employee claims tax rate averaging or, for payments not made through an employer, a medical costs offset or reduction in taxable income for retirement savings contributions. These are matters that are difficult for employers to substantiate, see section 236 and the discussion below at paragraph 337.

19. Section 5(1) deals with rates of tax generally applicable to resident individuals. The currency for Symmetrica is the SY the value of which is assumed to be somewhere in the vicinity of the Euro, the US Dollar, and 100 Yen. The thresholds and rates provided for in section 5(1) are only an example of a typical rate schedule and must be adjusted to local considerations. One point worthy of note is the absence of any exemption threshold. Rather than an exemption threshold, the Sample adopts a personal offset that directly reduces tax payable under this head of income tax, see the discussion below at paragraphs 218 and 219.

20. Section 5(2) and (3) provide an example of a general provision for averaging fluctuating incomes. Loss relief, such as the carry forward under section 33, does not fully address problems with income fluctuating from year to year within bands of taxation. Where two persons have the same amount of income over a five year period, the one whose income fluctuates the most year by year over that period may find they pay more tax than the person with the more stable stream of income. Two industries particularly prone to this problem are the agriculture industry and that of artists and entertainers. However, the issue is not specific to these or any other industries, e.g. it arises with respect to gains recognised on a transactional basis (such as capital gains) and some lump sum retirement payments. This is a general issue under an income tax calculated on a periodic basis.

21. Most countries deal with only part of the income fluctuation problem, e.g. by applying special rates or an averaging mechanism to capital gains. The problem with a piecemeal approach is that it raises characterisation issues, e.g. where persons seek to structure their arrangements so as to take advantage of any relief on offer. Rather than take such an approach, or make no provision at all, the Sample seeks a structural approach to the issue. Section 5(2) and (3) provide a limited averaging of income over a 5-year period subject to certain exclusions from averaging for non-residents and full-time students. Many countries may feel that this approach is too complicated. Again this is an area where the approach taken should be adjusted to local considerations.

22. As mentioned below at paragraphs 40 and 41, the Sample adopts the individual as the tax subject. This can cause particular problems with income splitting between parents and children. Under section 5(4) the investment income of a resident minor

is taxed at the highest individual rate. The relevant income is defined in section 117 and discussed below at paragraph 223. Another approach would be to tax children under the standard rate schedule and place greater reliance on an anti-income splitting rule such as that provided in section 63, discussed below at paragraph 134. Another approach is to adopt the family as the tax subject. Each of these alternate approaches has problems, in terms of perceived equity and administrability.

23. Finally, the treatment of individuals who are resident for only part of a tax year requires comment. Some countries do not recognise parts of tax years with respect to residence and a person is either resident for the whole year or non-resident. This is the approach adopted under the Sample with respect to entities. However, residence for part of a tax year is recognised under the Sample for individuals, see section 109(3) and (4) discussed below at paragraph 211. Where this occurs it is appropriate to reduce the tax rate thresholds that apply to such part-time residents to ensure that they do not benefit from thresholds designed for a full year. This reduction is achieved under section 5(7). The same issue arises in the context of personal offsets and is dealt with in section 115, discussed below at paragraph 219.

Entities

24. Entities are divided into partnerships, trusts, companies, and foreign branches. A different tax regime is provided under the Sample for each of these types of entities. While the treatment of each type of entity is dealt with in detail in the discussion of Part III, see below at paragraphs 201 to 297, an overview is necessary at this stage. Partnerships and foreign branches are taxed on a look through basis. Their income or loss is calculated on a separate entity basis but the income or loss for a tax year is generally allocated to the partners or branch owner for the year and tax is paid at this level. The exception is domestic branches of non-residents, which are taxed directly as a proxy for the non-resident owner.

25. The treatment of foreign branches as an entity separate from their owners is somewhat unconventional and has a number of important consequences. In particular, it results in recognition of dealings between a foreign branch and, e.g. its head office. These dealings will be subject to the arm's length principle as are dealings between other associated parties. It also means that a foreign branch may be resident in a country different from that in which its owner is resident. This is particularly important for domestic branches of non-residents. As a resident, such a branch will be required to withhold tax from certain payments made by it, including payments made to the branch's owner (subject to double tax treaty requirements). Further, such branches will be taxable on their world-wide income but entitled to foreign tax relief in the usual manner (including under double tax treaty where this is consistent with the treaty). This treatment will also be relevant where the source of a payment is determined by reference to the residence of the payer.

26. The reason for this treatment of foreign branches is to assimilate them, to the extent possible, with the treatment of subsidiaries. It is also viewed as an appropriate method of securing the tax base (e.g. by applying all anti-abuse rules directly to foreign branches). This treatment also means that only one set of provisions is required for calculating the income of entities situated in one country that are controlled by a resident of another country. That is, no special provisions are incorporated in the Sample for allocating income between a foreign branch and its owner.

27. Trusts are taxed on a semi-look through basis. Their income or loss is calculated on a separate entity basis. However, losses are not allocated to beneficiaries. Income may be allocated to beneficiaries but only in limited circumstances and, in the case of resident trusts, not in any tax year after the year in which the income is derived. Income that is not allocated to a

beneficiary is taxed at the trust rate mentioned in section 6(1), which is equal to the highest rate for individuals. This restricts the use of trusts as a tax shelter device. Income tax imposed on a trust under the first head of section 1(1) is calculated in the same manner as for individuals, see the discussion above at paragraph 17. However, personal and medical costs offsets may only be claimed by individuals. Income that is allocated to a beneficiary is taxed at the beneficiary's tax rate.

28. By contrast, companies are taxed on a separate entity basis. Losses and income of companies are not generally allocated to shareholders. Income tax under the first head of section 1(1) is imposed on companies at a rate that is 5 percentage points below the highest rate for individuals. The calculation of tax payable is the same as that for trusts. Dividends distributed by resident companies are subject to a 10 percent final withholding tax under the third head of charge to income tax in section 1(1). The effect is that there may be some benefit in the form of tax deferral for income retained in a company, taxation at 30 percent instead of a potential 35 percent. However, where profits are distributed the overall tax levied with respect to corporate profits is slightly higher than the highest rate for individuals, 37 percent instead of 35 percent. This system represents only a compromise and one form of the many corporate tax systems that may be implemented. It has the advantages of relative simplicity and a small incentive towards saving through companies. The final withholding tax is also likely to be creditable for non-resident shareholders under foreign tax credit systems of foreign countries.

29. The downside of the system is the potential taxation of individuals at rates exceeding their personal marginal rates with respect to income derived through companies, i.e. for individuals otherwise subject to the lower individual marginal rates. This may be true where individuals do not control the distributing company, although in this case there is a question as to who bears the burden of the corporate tax. However, where the company is closely held, the individual controllers will typically be able to engage in self-help integration by removing what might otherwise be profits in a form that is deductible to the company, such as interest or remuneration. It is unlikely that these sorts of payments would be viewed as excessive where they do not exceed the threshold applicable to the highest individual tax rate.

Non-residents

30. The Sample suggests the taxation of non-resident individuals under the first head of section 1(1) at a flat rate of 20 percent of their taxable income. The type of income in question is likely to be predominantly income from employment. This is because domestic businesses of non-residents will normally create a domestic branch and such branches are treated as separate persons for the purposes of the Sample, see section 105 and the discussion above at paragraphs 24 to 26 and below at paragraph 212. Further, many domestic source payments to non-residents (other than for employment) are subject to final withholding tax under the third head of section 1(1). Like income from employment exercised domestically, these types of payments typically represent domestic wealth created (value added). As mentioned below at paragraphs 141 and 142, domestic wealth created is the primary tax base of the Sample. In order to suppress the incentive for non-residents to characterise payments as of a particular type in order to reduce domestic tax otherwise payable, the Sample seeks to impose a consistent level of tax on payments to non-residents for domestic wealth created. Deductions are essentially denied in calculating income from employment. Therefore, there is a level of equivalence between the taxation of domestic employment income of non-residents at a flat rate under the first head of section 1(1) and the subjection of other domestic source payments to non-residents to final withholding tax at the same rate under the third head.

31. The tax rate selected for non-resident individuals under the Sample is at the low end of the rate schedule applicable to resident individuals. There are a number of reasons for this selection. Non-residents are not granted personal offsets, medical costs offset, or foreign tax offsets and are typically denied many social benefits available only to residents. Further, progression is usually felt inappropriate for non-resident individuals as it is difficult to collect sufficient information to tax them according to their ability to pay, if that were considered appropriate in any case. Further, non-residents may be subject to taxation in their own country of residence. In many cases the thresholds to higher tax rates in the country of residence may be higher than in the country of source. In this case, higher taxation in the source country than in the residence country may have the disadvantage of discouraging highly skilled labour from working in the source country.

32. The second head under which income tax is imposed by section 1(1) is on the repatriated income of domestic branches of non-residents, i.e. a branch profits tax. This tax is imposed in order to provide a treatment similar to the treatment of dividends distributed by resident subsidiaries to non-resident parents. It is possible to produce a similar treatment by treating such ranches as resident companies. The present treatment is viewed as more transparent and consistent with common international practice. Branch profits taxes are, however, inconsistent with Article 10(5) of the OECD Model Tax Convention on Income and on Capital (the "OECD Model") and are often suppressed in double tax treaties.

PART II: INCOME TAX BASE

33. This Part contains rules for calculating taxable income, the tax base that is used in the calculation of income tax payable under the first head of section 1(1). Division I of this Part contains mechanical rules for the calculation of taxable income. Essentially it involves identifying amounts that are included, excluded, or deducted in that calculation. By contrast, Divisions II and III elaborate on amounts identified under Division I. Division II deals with timing the recognition of amounts, quantifying and characterising amounts and allocating them to particular persons. While these issues must be dealt with under any income tax, often they are not well identified or grouped by income taxes in practice.

34. Some amounts included or deducted in calculating income are recognized on a deferred basis. In the case of costs incurred for depreciable assets, the recognition is deferred over the useful life of the asset. In other cases, the recognition may be deferred until an asset or liability is “realised”. This type of deferral sets up what is referred to herein as the “transactional basis income tax”. This phrase is used in contradistinction to the usual “payments basis income tax” set out in Division I. The distinction is further discussed below at paragraphs 106 to 108 and 157 and 158. The transactional basis income tax is essentially set out in Division III together with the deferred recognition rules for depreciable assets. The latter may have been incorporated within the timing rules in Division II. However, the rules for depreciable assets are heavily integrated with the transactional basis income tax and are incorporated in Division III for convenience. Otherwise, Division III covers the traditional ground of what is referred to in Anglo- Saxon terms as the “capital gains tax”. That phrase is not used in the Sample or this Commentary as there is an effort to minimize the distinction between capital and revenue payments.

Division I: Calculating the Income Tax Base

Subdivision A: Taxable Income

35. This short Subdivision contains the general formula for calculating the base to which income tax rates are applied in calculating income tax charged under the first head of section 1(1). Section 10 makes it clear that a "slice by slice" (sometimes referred to as a "schedular") approach to the calculation of income is adopted by the

Sample. Under this approach a person calculates their income from each employment, business, or investment for a particular tax year. Deductions, if available, are taken separately in each of these calculations of income. This income, after any deductions, is filtered through the jurisdictional rules in section 15 to arrive at the person's assessable income from each employment, business, or investment for a tax year. These filtered incomes, i.e. the person's assessable income from each employment, business, or investment, are aggregated for a year under section 10. The aggregate is reduced by certain contributions to approved retirement funds under section 191, discussed below at paragraph 310, to arrive at the person's taxable income for the year.

36. There are other ways to calculate taxable income. In particular, a global approach is often used. Under this approach income is not calculated separately for particular activities such as separate employments, businesses, or investments. Rather, inclusions in income from all activities are totaled and amounts deductible are totaled with taxable income equaling any excess of the former over the latter. The primary difference in the approaches is what deductions may be taken against or reduce. Under the global approach, losses from one activity (excess deductions) automatically reduce income (excess inclusions) from other activities. While this may be appropriate in theory and may increase simplicity, it does have some disadvantages.

37. The primary disadvantage of the global approach is a lack of flexibility in targeting potential for abuse. Almost invariably, countries that adopt a global approach end up "schedularising" the calculation of taxable income by quarantining certain deductions, e.g. those incurred on passive investment (sometimes referred to as "negative gearing"). The difficult theoretical issues that justify quarantining include the blurred distinction between whether a cost is incurred in producing income or whether it represents consumption by a person and is, therefore, not deductible. A simple example is costs incurred in conducting a hobby farm. Another is the difficult issue of determining the timing of deduction for costs incurred in securing lasting assets or benefits. Here there is the potential to "front load" deductions where the real return with respect to which they are incurred will not be derived until an asset is realised in the future.

38. By contrast, countries that adopt the slice by slice approach almost invariably permit losses incurred on one particular slice of activity to offset income on other slices. Therefore, the differing effects of adopting a slice by slice or global approach are often an issue of form and not substance. One disadvantage of the slice by slice approach is that it is necessary to allocate deductions to particular activities. To the extent that a global approach is schedularised, such an approach faces the same issue. The slice by slice approach will vary depending on the types of activity identified for which income must be calculated separately. It is also possible to aggregate the calculation of income from similar activities, e.g. calculate income from all businesses conducted.

39. The slice by slice approach is adopted in the Sample because it is viewed as more transparent and providing greater flexibility for quarantining, particularly deductions. It is also viewed as more intuitive in that persons are more likely to consider whether they have derived income or incurred losses on particular activities before considering whether they have an overall income or loss. This is also likely to be the manner in which accounting records are kept.

40. Taxable income is determined separately for each person. There is no grouping of income between associated persons under the Sample. For example, in the case of natural persons, the individual is adopted as the tax subject. Many countries adopt a broader economic unit as the tax subject, such as a couple or family. A main argument in favour of the broader approach is that it does not discriminate between, e.g. dual income couples and

single income couples. However, countries implementing this broader approach often have problems with their tax systems either encouraging or discouraging marriage or other union within an economic unit.

41. By contrast, using the individual as the tax subject discriminates in favour of each member of an economic unit contributing to the unit's income and sharing in its domestic tasks. Where men are the dominant income earners, this may encourage women to enter the workforce and is often viewed as consistent with economic independence of women. Using the individual as the tax subject causes problems with income splitting between members of the same family unit. However, this is also typically true of countries adopting some broader economic unit as the tax subject as there is no obvious line as to when a person is within or outside an economic group. On top of these considerations, many countries may have to factor in the effect of social security or child payments from the government. The tax unit also has important implications for tax administration; generally, the individual unit is simpler. In the result, the Sample opts for using the individual as the tax subject. This approach is another matter that must be adjusted to local considerations and social values.

42. As in the case of individuals, there is no grouping of entities under the Sample in determining the tax subject, e.g. no consolidation is allowed. This approach appears consistent with the slice by slice approach (consolidation appears more consistent with a global approach). Under the slice by slice approach it is possible to provide for the transfer of tax attributes between entities and their associates so as to provide a similar treatment to that available under, e.g. consolidation. This is the approach taken under the Sample. There are three manners in which tax attributes may be transferred between entities and their associates under the Sample. The first is the transfer of losses under section 33, the second is the transfer of assets and liabilities on a non-recognition basis under section 94, and the third is the transfer of excess foreign income tax for purposes of calculating foreign tax offsets under section 200. These transfers recognise that many entities and their associates form but one economic unit and are consistent with a general approach of basing recognition on the substance of activities rather than their form. Each of these provisions and this rationale is discussed further below at paragraphs 93 to 95, 189 to 193, and 316.

Subdivision B: Assessable Income

43. As mentioned above at paragraph 35, section 15 is the primary jurisdictional filter in the Sample. In the usual manner, world-wide income of residents is assessable whereas only domestic source income of non-residents is assessable. The source of income is a characteristic of income and is determined under section 68, discussed below at paragraphs 140 to 146. Residence is a characteristic of a person, is dealt with in Part III, and is particularly discussed below at paragraphs 210 to 212.

General Formula for Calculating Income

44. Sections 16, 17, and 18 provide for the calculation of income of a person from an employment, business, or investment for a tax year, respectively. Each section begins with a provision stating that such income is remuneration (employment) or gains and profits (business and investment) from the activity in question. The reference to gains and profits is intended to confirm that the term "income" where used in the Sample is a net concept, i.e. after deductions. This is supported by the definition of "income" in section 345, which is generally in terms of income from employment, business, or investment, and these types of income are defined by reference to sections 16, 17, and 18. While the Sample adopts the general concepts of remuneration and gains and profits to represent income, it then proceeds to be rather specific as to the amounts that must be included and those that may be deducted in calculating income. Specific inclusions are generally provided for by

sections 16(2), 17(2), and 18(2) and specific deductions are generally provided for by Subdivision D.

45. The slice by slice approach adopted in the Sample means that income is calculated separately for each activity of a person that constitutes an employment, business, or investment. It is, therefore, necessary to determine the character of a person's activities in order to determine whether they are of these types. The definitions of "employment", "business", and "investment" in Section 345 provide the relevant characterization.

46. "Employment" is the dominant definition and whether an employment exists is primarily determined according to general law (paragraph (a) of the definition). Employment is typically an earning activity consisting predominantly of the provision of labour by an individual. The definition of "employment" is extended, in particular, to in clued most "managers" of entities, e.g. directors of a company and trustees of a trust, see the definition of the latter term in section 106. The primary reason for this extension is to ensure that these managers are subject to wage withholding. An alternative approach is to treat the activities of these managers as a business and subject payments to them by their entity to withholding as service fees. Under this approach, tax withheld would be adjusted under the tax instalment system. "Employer" and "employee" are defined in terms of "employment" and all of these terms make it clear that only an individual may be the subject of employment.

47. "Business" is defined broadly in section 345 to include trades, professions, vocations, and arrangements with a business character. In this way, the term is used throughout the Sample as a shorthand reference to these types of activities. If a business activity may also be characterised as employment, primacy is given to the characterisation as employment. However, unlike employment, business is an earning activity typically consisting not only of the provision of labour but of the combined provision of labour and capital.

48. It is possible that a particular person conducts more than one business and, therefore, must calculate income separately for each business. There are no rules in the Sample for determining whether a particular person's business activities constitute one or more than one business. This will depend on the facts of each case and local jurisprudence. This matter is not further elaborated in the Sample. As losses from one business of a person may be set against income from another business of the person, the issue will most often not be critical and may be dealt with in practice notes issued by the tax administration. However, the issue will become more acute if a particular country quarantines some or all business losses.

49. "Investment" is also defined broadly in section 345 in terms of holding "depreciable assets" or "investment assets". These types of assets are, in turn, broadly defined in section 76. Essentially, these definitions cover any assets unless they are held primarily for personal use and are not used in the production of gains and profits. The definition of "investment" excludes employment or business. In this way, "investment" is used as the residual manner in which income may be derived and "income from an investment" is the residual category of income. In contrast to employment and business, investment is typically an earning activity consisting predominantly of the provision of capital.

50. As with the definition of "business", the issue arises as to whether certain activities of a person constitute one or more investments. There are two tests adopted for this purpose in the definition of "investment". The first is whether the assets held are of a similar nature. So, for example, a block of shares may constitute a single investment. The second test is whether the assets are used in an integrated fashion, on similar terms, and subject to similar conditions, including as to location. So, for example, a house that is held passively and rented out with associated furniture, will constitute a

single investment. Any liabilities incurred with respect to the asset or assets held are also part of the investment.

51. Each of the definitions of "employment", "business", and "investment" is extended to include past, present, or prospective employment, business, or investment, respectively. This extension is intended to ensure that amounts derived and costs incurred with respect to a particular activity either before the activity is started or after it ceases are treated appropriately. For example, where start-up costs are incurred before a business commences, they may be deductible during the tax year in which they are incurred, unless they give rise to a lasting asset in which case Division III will deal with them. This may cause a loss in early years of a business that may be set against income from other businesses or be carried forward under section 33. Another example is where an employee receives remuneration either before or after employment. The remuneration will be included in calculating income from the employment even for tax years before the employment activity commences or after it ceases.

Specific Inclusions in Calculating Income

52. Sections 16(2), 17(2), and 18(2) each provide for specific amounts to be included in calculating income from an employment, business, or investment, respectively. That is, these are amounts that must be included in the calculation of remuneration or gains and profits under section 16(1), 17(1), or 18(1), as the case requires. The relevant lists of inclusions are quite comprehensive but are not intended to be exhaustive. That is, even amounts that are not mentioned must be included if they are required to be included by the ordinary meaning of "remuneration" or "gains and profits".

53. The inclusions in calculating income from an employment for a tax year are couched in terms of payments made to the employee during the year. "Payment" is a central concept of the Sample and is broadly defined in section 41, discussed below at paragraphs 103 and 104. In essence, the definition will cover any financial gain including through in-kind payments. The payments must be made by the employer to the employee. The "making" of a payment is determined by reference to sections 45 and 60, discussed below at paragraphs 111 and 131, respectively. In the case of payments of the type referred to in section 16(2)(a) to (f), no particular nexus is required with the employment. If a payment may be characterised as of one of those particular types then the fact that the payment is made by the employer to the employee is sufficient to require the amount to be included in calculating the employee's income from the employment.

54. By contrast, section 16(2)(g) is of a residual character requiring a more specific nexus, i.e. any other payment made "in respect of" the employment must be included in calculating the employee's income from the employment. This phrase, "in respect of", is a typical nexus test used throughout the Sample. It is not defined and so will take its ordinary meaning. Any further elaboration of this term is only likely to result in further generalities. The tax administration may issue practice notes setting out its view as to when payments, not covered by the prior paragraphs of section 16(2), will meet the nexus in section 16(2)(g).

55. Specific inclusions in calculating income from a business or investment for a tax year are couched in different terms to that used for income from employment. Here the phrase used is "amounts derived". The reason for the difference in terminology is primarily one of timing. Employees are required to account for tax purposes on a cash basis and so payments made to an employee as employee are recognised for tax purposes at the time of payment, see section 46. By contrast, income from business or investment may be accounted for on a cash or accrual basis depending on the type of person involved and the activities of that person. In this case, a payment may be recognised for tax purposes at a time that is different from when the payment is made. "Amount derived" is defined in section 41 in terms of a payment received by a person or

which a person is entitled to receive. Which timing is appropriate will depend on the method of tax accounting used by the person.

56. Section 17(2) and 18(2) have some common inclusions in the calculation of income. They include gains on the realisation of assets and liabilities of a business or investment as well as recapture of excess depreciation on the realisation of depreciable assets. These gains and recapture are calculated under Division III and, as mentioned above at paragraph 34, are essentially net amounts that form the core of the transactional basis income tax.

57. Another common inclusion worthy of specific mention is gifts received in respect of a business or investment. This inclusion in many ways reflects the residual inclusion in calculating income from employment mentioned above at paragraph 54. However, as a payment received in conducting a business or investment may be received as a contribution of capital (generally made out of pre-taxed funds), it is necessary to limit this residual category to "gifts". "Gift" is defined broadly in section 345 as essentially excess consideration received. Gifts from associates are not included in section 17(2) or 18(2) as it will often be difficult to determine if such gifts are made in respect of a business or investment or as a result of the relationship giving rise to the association. Gifts made to entities by associates are generally treated as a contribution to the capital of the entity, see section 165 and the discussion below at paragraph 269. This approach is also consistent with the approach to “income” under the Sample, which does not include mere transfers of wealth, see further below at paragraphs 106 to 108.

58. There are some amounts that are exclusively included in calculating income from a business or investment under sections 17(2) and 18(2). "Service fees" are included in calculating income from a business under section 17(2) as are "incomings" for "trading stock". The first of these terms is defined in section 345 in terms of a payment attributable to the rendering of services by a business. As an investment activity will not involve the provision of labour, this head of inclusion is not reflected in section 18(2). Similarly, "trading stock" is defined in section 76 in terms of assets sold in the ordinary course of conducting a business. "Incomings" is a central concept in the transactional basis income tax and will include all amounts received in respect of assets such as trading stock, see section 81 and the discussion below at paragraphs 165 and 166. This means that sale proceeds from trading stock are directly included in calculating income. This is in contrast to amounts derived from the realisation of other assets of a business where only the net gain on the realisation is so included. In order to balance this situation, a person may deduct an allowance for trading stock under section 28, which essentially represents the cost of trading stock sold. The result on the realisation of trading stock is essentially consistent with that on the realisation of other business assets under the transactional basis income tax.

59. Another important inclusion in calculating income from a business is provided by section 17(2)(g). An amount of the type referred to in section 18(2), i.e. included in the calculation of income from an investment, that is effectively connected with a business is included in calculating income from the business and not income from an investment. The phrase "effectively connected" is not defined and again is an issue of nexus. This phrase is often used in double tax treaties and is intended to have the same meaning as in such treaties. The primary operation of section 17(2)(g) is with respect to amounts referred to in section 18(2)(a). This head of inclusion in calculating income from an investment is not otherwise reflected in section 17(2) in calculating income from a business.

60. Section 18(2)(a) makes reference to the classic forms of return on capital being "dividend", "interest", "natural resource payment", "rent", and "royalty". Gains from “investment insurance” and “an unapproved retirement interest" as well

as "retirement payments" are also referred to and are further discussed below, see paragraphs 305, 309, and 310. Each of these terms is defined in or via section 345. "Dividend" is defined broadly and is essentially any return of a shareholder from an interest in a company. "Interest" is defined in terms of a payment for the use of money. This definition includes certain payments under debt obligations and other financial instruments as well as amounts payable under an annuity, instalment sale, or finance lease that are characterised as interest by section 67.

61. "Natural resource payment" is defined as payment for a right to take natural resources. Natural resource payments are treated in the same manner as rents and royalties under the Sample. The definitions of "rent" and "royalties" exclude natural resource payments. "Rent" is defined in terms of a payment under a lease of a tangible asset and "royalty" in terms of a payment under a lease of an intangible asset with a list of specific inclusions. "Lease" is also defined in section 345 in terms of a temporary right in respect of an asset of another person, other than money. Accordingly, the broad approach under the Sample is that payments for the use of money are interest, payments for the use of tangible assets are rents, and payments for the use of intangible assets are royalties. The reason for the separate identification of natural resource payments is that in most cases these payments are not for the use of an asset but, rather, the removal of assets forming part of the land. Further, these payments often give rise to greater source country rights to taxation under double tax treaties.

Specific Exclusions in Calculating Income

62. Sections 16(3), 17(3), and 18(3) provide for the exclusion of certain amounts in calculating income from an employment, business, or investment, respectively. Commonly excluded by these provisions are "exempt amounts" and "final withholding payments". Both of these phrases are defined in or via section 345. Exempt amounts are excluded because they either represent taxed funds or are exempt on other policy grounds. Final withholding payments are excluded because withholding of tax from these payments represents a final income tax liability under the third head of charge in section 1(1).

63. Certain other amounts excluded in calculating income by section 16(3), 17(3), or 18(3) are not reflected by exclusions in the other sections. The exclusive exclusions under section 16(3) are relatively self-explanatory. The exclusive exclusion under section 17(3) is intended to give primacy to inclusion in calculating income from an employment and that in section 18(3) to give primacy to inclusion in calculating income from an employment or business.

Subdivision C: Exempt Amounts

64. Section 20 is the primary exemption provision in the Sample. Exemptions are kept to a minimum and there are no particular industry concessions. Conventional wisdom suggests that these types of concessions often cause more harm than good. Most of the exemptions in section 20 are self-explanatory but a couple require some further elaboration.

65. Section 20(1)(f) and (g) are related and can be dealt with together. The Sample incorporates a relatively comprehensive income tax. While some academically supported comprehensive definitions of income suggest that gifts should be included, in practice countries predominantly do not tax gifts as income, except in limited circumstances. Gifts are often taxed in practice under a gift, wealth, or inheritance tax. The reasoning is that the income tax is targeted at wealth creation (value added) and not the simple holding or transfer of assets, see further paragraphs 106 to 108. Consistent with this theme, it is possible to include gifts in calculating income of the donee if a tax deduction is granted to the donor. This approach seems to add unnecessary complexity to an income tax and open up opportunities for income splitting.

66. Accordingly, the Sample exempts gifts (including on death) unless they are derived in the course of an earning activity, see section 20(1)(f). Gifts from non-associated persons are included in calculating income where derived in the course of an earning activity because it is difficult to distinguish such gifts from the return from the activity in question. Further, while gifts are generally not included in calculating income of the donee, where the gift is of an asset, the donor will realise the asset. Typically, the donor will be treated as deriving an amount from the realization equal to the market value of the asset, see section 94. This means that the donor may be treated as deriving a gain from realization or, in limited circumstances, a loss. Such a gain or loss may be included or deducted in calculating the donor's income, i.e. as a result of the transactional basis income tax, where the relevant asset is held as part of a business or investment.

67. Also exempted are amounts derived in respect of assets and liabilities held for personal purposes that are not used in the production of gains and profits. Such amounts would not be included in calculating income under Subdivision B in any case and so section 20(1)(g) is mainly by way of confirmation. This exemption is necessary for administrative purposes, e.g. people are unlikely to retain records of the assets in question.

68. Section 20(1)(h) exempts amounts derived by exempt organizations. The exemption does not extend to amounts derived in conducting a business that is unrelated to the organization's exempt status. This limitation is needed in order to ensure that exempt organizations do not compete in markets where they have a tax advantage over other market participants. This would distort competition in the market. "Exempt organization" is defined in section 20(2). The types of organizations exempted must be adjusted to local social values and the inclusions in the Sample are only by way of example. The Sample grants the exempt status only where the organization has obtained a private ruling confirming its status and meets the requirements against providing collateral benefits outlined in section 20(2)(c).

Subdivision D: Deductions

69. This Subdivision contains rules regarding the deductibility of amounts in calculating a person's income. It begins with a general deduction provision and the rest of the Subdivision proceeds to deal with some particular issues that might not be appropriately dealt with by the general provision. As a general rule, no deductions are available in calculating income from employment. This is because section 25(1) prohibits deductions unless expressly allowed and none of the primary deduction provisions allow deductions in calculating income from employment. This approach is adopted for two reasons. Firstly, payments for work performed in the course of employment usually represent pure payments for the provision of labour and this is a form of wealth created (value added). By contrast, many payments in the course of conducting a business or investment represent payments for the transfer of wealth and not wealth created through the provision of capital. Therefore, deductions are primarily available in calculating income from a business or investment to ensure that transfers of wealth are not taxed. This reasoning does not apply in the case of income from employment. Secondly, as mentioned above at paragraph 18, a lack of deductions in calculating income from employment means that in many cases the wage withholding tax may serve as a final tax.

General Deduction Provision

70. Section 25 is divided into two main parts, the first is a provision denying deductions and the second is a provision allowing deductions. Section 25(1) overrides all other provisions of the Sample in pro viding that certain amounts are not deductible. The broad residual category is that no deduction is allowed unless expressly provided for by the Sample. The effect of this is to override any deduction that might otherwise be available by reason of the general formula of income from an

employment, business, or investment being based on remuneration or gains and profits, as the case requires. "Consumption costs" and "excluded costs" are not deductible in any case, even if the costs would otherwise be treated as deductible by another provision. These terms are defined in section 25(4).

71. As the name suggests, "consumption costs" are essentially costs that are considered to represent consumption by an individual and, therefore, that should not reduce income. The classic examples of these costs are set out in paragraph (a) of the definition, i.e. costs with respect to shelter, food, leisure, commuting, clothing, and education. A clear distinction between costs that represent personal consumption and those that are incurred in deriving income is difficult, if not impossible, to make or apportion. Again the Sample takes the approach of outlining some general principles that must be adapted to particular circumstances and may appropriately be the subject of practice notes issued by the tax administration.

72. Paragraph (a) of the definition of "consumption costs" deals with costs incurred by individuals in respect of themselves whereas paragraph (b) deals with costs incurred by another person in respect of an individual. In the case of paragraph (b) the provision of shelter, food, leisure, commuting, clothing, or education by a person to an individual will constitute a payment by the person to the individual, see the definition of "payment" in section 41(1). The issue becomes whether the person may claim a deduction for costs incurred in making the payment to the individual. No deduction will be allowed for such costs unless one of the conditions of paragraph (b)(i), (ii), or (iii) of the definition are met.

73. The first of these conditions is that the payment is included in calculating the individual's income. Whether or not the payment is included in calculating the individual's income will depend on whether the payment is sufficiently connected with an earning activity of the individual for the purposes of sections 16, 17, and 18. For example, assume that an employer provides an employee with a payment in the form of a fringe benefit. If the fringe benefit is not included in calculating the employee's income, e.g. the provision of in-house meals and refreshments referred to in section 16(3)(b), generally no deduction will be allowed to the employer for costs incurred in making the payment, e.g. the costs of the food and any help in serving the meals. In other words, the costs incurred by the employer in making the provision to the employee represent consumption by the employee. If the payment is included in calculating the employee's income then whether or not a deduction is available for costs incurred by the employer in making the payment depends on whether the costs are deductible under another provision such as section 25(2).

74. The second condition that excludes costs incurred in making a payment to an individual from the definition of "consumption costs" is where the individual provides market value consideration for the payment. So, for example, costs incurred in providing a meal at a restaurant will be deductible by the restaurant owner if individuals to whom meals are provided pay for them. Costs incurred in providing free meals to relatives would not be deductible. This rule should not deny a deduction for costs incurred in providing samples or prizes to individuals. In this case, by providing their services in sampling or entering a competition, individuals may be considered to have provided market value consideration through the provision of their services. Such costs may also not be consumption costs by reason of paragraph (b)(iii) of the definition of "consumption costs", which is relatively self-explanatory.

75. Deduction of "excluded costs" is also prohibited. This term includes costs incurred in paying certain bribes, fines, and penalties. The policy here is to ensure that the effective cost of bribes, fines, and penalties to the payer is not reduced by reason of deductibility. "Excluded costs" also include those incurred in deriving exempt amounts and those incurred by non-residents in deriving final withholding payments. In the latter case, this is consistent with these payments being

subject to a final withholding tax on the gross amount of the payment. Costs incurred by residents in deriving final withholding payments are not "excluded costs" and so deductions may be available for such costs. The only types of final withholding payments that may be made to residents are dividends, gains from investment insurance, and gains from unapproved retirement interests paid by resident entities. In all these cases the final withholding tax represents a second layer of tax on top of any tax levied on the distributing entity's income, see the discussion above at paragraphs 28 and 29. *If a deduction were denied for costs paid in deriving this income, the inclusion of the costs in calculating the income of the recipient of the costs and the taxation of this income might produce a third layer of tax with respect to the same wealth created.* This would be inconsistent with the theme of the Sample.

76. Section 25(2) is the general provision allowing deductions in calculating income from a business or investment for costs incurred in the production of the income. "Costs incurred" is defined in section 41 in terms of making a payment or being obliged to make a payment. In a similar fashion to the deriving of an amount, when a person incurs a cost will depend on the method of tax accounting being used by the person, see section 46. The words "to the extent" in section 25(2) provide for apportionment of costs that are only partly incurred in the production of income. This phrase, or a similar phrase, is used throughout the Sample where apportionment is available. Section 25(3) proceeds to deny a deduction for certain costs. However, section 25(2) and (3) are subject to the other express deduction provisions in the Sample. Further, section 25(2) is expressly subject to section 25(3). Therefore, a deduction that may be allowed by section 25(2) may be denied by another provision, including section 25(3). A deduction that may be denied by section 25(3) may be allowed by another provision, but not including section 25(2).

77. Under section 25(3) a deduction is denied for costs of a capital nature. This reflects an Anglo-Saxon approach to income taxation. However, the definition of "costs of a capital nature" in section 25(4) does not bear out the traditional capital/revenue distinction. In particular, costs incurred in acquiring an asset are of a capital nature where the useful life of the asset exceeds 12 months. The resultant non-deductibility of such costs is ameliorated in two ways. With respect to costs incurred by a business or investment in purchasing a wasting asset, the costs are effectively deductible over the useful life of the asset by reason of the allowance for depreciation under section 31. Secondly, if the asset is non-wasting, the costs are effectively deductible when the asset is realised under the transactional basis income tax, i.e. in calculating any gain or loss from the realisation of the asset under Division III.

78. Under section 25(3)(d) a deduction is denied for costs incurred on the realisation of a liability. Again however, these costs will be effectively deductible in calculating any gain or loss on the realisation, assuming the liability is owed by a business or investment. Under section 25(3)(e) foreign income tax is not deductible. This is because foreign tax offsets are provided under section 200. Under section 200(5), a person may relinquish a foreign tax offset in favour of a deduction. In this case, a deduction is not denied by section 25(3) because that section is expressly subject to Part IV, which contains section 200(5).

Specific Deduction Provisions

79. Sections 26 to 33 in a sense override section 25(2) and (3) by either granting a deduction that would be denied by the general deduction provision or denying a deduction otherwise deductible under that provision. Section 26 is different from sections 27 to 33 in that it plugs into section 25(2). Its intention is to treat interest paid on funds borrowed as incurred in the production of income the funds are used in that production or used to acquire an asset used in that production. Section 26 looks to the use to which the borrowed funds are put and not the purpose for which the funds were borrowed. This means that where the use of the funds changes so may the

deductibility of interest incurred with respect to the funds.

80. Section 27 requires some explanation. It is intended to address the tax base erosion problem towards which thin capitalization and similar provisions are directed. This erosion results from controllers of an entity being able to remove funds from the entity in a deductible form that is subject to less taxation than if the funds were removed from the entity in the form of a distribution of profits. ile this is a general tax design issue and relates to the inherent fungibility of different types of payments, it is typically of greatest concern with respect to non-resident controllers of resident entities. The typical provisions adopted in this area, such as thin capitalization rules, are either very complicated, very arbitrary, or both. There appears no justification for repeating this style of provision in a Sample income tax.

81. The tax base in issue is typically the source tax base and raises a classic issue for source countries, particularly developing countries. The issue is the amount of tax that may be levied on the basis of source without deterring foreign investment. There are at least two source tax bases that may not result in such deterrence. The first is tax for which foreign tax relief is available in the capital exporting country. As capital exporting countries adopt many different methods of foreign tax relief this tax base is problematic, particularly the complexity it involves for developing countries. The most likely tax that will be granted foreign tax relief by capital exporting countries is a relatively low rate direct tax. The Sample seeks to access this tax base by imposing a consistent 20 percent final withholding tax on potentially deductible payments by resident entities to non- residents that essentially represent domestic wealth created. This tax may not always hit the mark in securing foreign tax relief in a capital exporting country, e.g. where the foreign investor is tax exempt in that country. It may also be sacrificed to some extent in negotiating double tax treaties. Again, the level of this withholding tax must be adjusted to local considerations.

82. In principle, the second relatively secure tax base available to source countries is economic rents derived by non-residents from the source country. The taxation of economic rents may not deter foreign investment as the source country is only taxing the amount above what can generally be secured elsewhere. Indeed, there seems strong justification for taxing abnormal returns derived by non-residents, which at some level represent exploitation of the source country's markets and resources. The primary benefits from these markets and resources should go to the local society.

83. Section 27 is a relatively simple rule directed towards securing this second tax base. As with other provisions of the Sample, it is just one example of an approach to address a particular problem and must be adjusted to local considerations. It p laces a cap on the total amount of deductions that a person can claim for certain payments that are subject to final withholding tax, referred to as "investment final withholding payments". This phrase is defined in section 222 to cover payments of interest, natural resource payments, rents, and royalties to non-residents. It may also include payments of wages or service fees to a non-resident that is associated with the payer. A deduction may be claimed for these types of payments cumulatively during the year until the relevant threshold is reached, at which stage a deduction is denied for any further payments of these types.

84. The threshold is calculated by reference to the formula in section 27(1). In order to identify economic rents it is necessary to deduct a standard rate of return. The standard rate identified in the Sample is the statutory interest rate, i.e. the general rate applied throughout the Sample to calculate things like interest on outstanding tax. It is viewed as in the low range and particular countries may use a higher rate. The rate is applied to the "gross domestic value" of the business or investment at the start of the year or an

average value over the year may be used on notice by the tax administration, e.g. in cases of suspected abuse. This value is defined in section 27(2) by reference to the book value of assets, determined gross of liabilities and according to generally accepted accounting principles.

85. As in the case of other thin capitalization type rules, the rule in section 27 raises issues as to whether it is permitted by international norms. One issue is whether it is contrary to Article 24(4) of the OECD Model. This provision requires "interest, royalties and other disbursements" by a resident of one country to a resident of the treaty partner to be deductible "under the same conditions" as if paid to a resident of the one country. It is arguable that, in the context of section 27, a payment to a resident that is not subject to final withholding tax and one to a non-resident that is subject to final withholding tax are not paid "under the same conditions". In order to enable non-residents to put themselves under the same conditions as residents, section 222(3) enables non-residents to elect that a payment that would otherwise be a final withholding payment is not a final withholding payment. In this case, the non-resident would be taxed by assessment. Therefore, it appears section 27 does not breach Article 24(4). In any case, Article 24(4) is subject to Article 17(1), which may secure the operation of Section 27 in the context of payments to foreign associated persons, the predominant situation in which it is likely to apply. Further, Article 24(4) is often suppressed in double tax treaties.

86. Another issue is whether income tax levied as a result of the denial of a deduction under section 27 is available for foreign tax relief in capital exporting countries. While this issue must be investigated on a country -by-country basis, it does seem that the denial of this deduction, just like that under more conventional thin capitalization rules, would not change the nature of the tax. In any case, even if a particular capital exporting country denied foreign tax relief for this tax, it may be that the foreign investor could engage in self-help. The threshold is only likely to be breached with respect to payments made to a foreign associate of the resident entity. In this case, it would appear appropriate for the resident entity to change the nature of the relevant payments to distributions of profits to the foreign associate. As a distribution of profits, the payments will not be deductible and will be subject to a final withholding tax or branch profits tax. In essence, the excessive payments will be subject to the same tax treatment by the source country irrespective of whether they take the form of a non-deductible payment under section 27 or a distribution of profits. Where characterized as a distribution of profits, the tax underlying the distribution (representing a denial of a deduction for the payment) should be granted foreign tax relief by capital exporting countries.

87. Section 28, dealing with trading stock, is more straightforward. The terminology used in this section is heavily integrated with Division III dealing with assets and liabilities. Essentially, section 28 grants a deductible allowance for the cost of trading stock disposed of during a tax year but otherwise denies a deduction for the cost of trading stock. The combined effect of this section and section 17(2)(b), which includes amounts derived in respect of trading stock directly in calculating income, is consistent with that under the transactional basis income tax with respect to other assets under Division III. The issue of identifying the cost of trading stock at the end of a tax year and, thereby, the cost of trading stock disposed of during the year is determined under section 80 and discussed further below, see paragraphs 163 and 164.

88. The approach to repair and improvement costs in section 29 requires some explanation. Many income taxes grant an immediate deduction for costs incurred in repairing depreciable assets but require depreciation of costs incurred in improving depreciable assets. However, the distinction between a repair and an improvement is notoriously difficult to determine. Section 29 ignores this distinction by granting a limited

deduction for costs incurred in the repair or improvement of depreciable assets. The deduction available with respect to all assets in a particular pool of depreciable assets is limited to 5 percent of the written down value of the pool at the end of the tax year in question. Any cost that is not deductible is added to the depreciation basis of the pool and will be depreciated. Pools of depreciable assets are discussed below at paragraphs 175 to 183.

89. Section 30 provides a deduction for certain research and development costs. In the absence of section 30, these costs might not be deductible under section 25(2), e.g. because they are of a capital nature or not incurred in producing income. This provision does not grant an immediate deduction for costs that are incurred in the acquisition or improvement of an asset. Such costs are dealt with under the general provisions applicable to costs of that type. Section 30 only grants a deduction for research and development costs that are not directly connected with an asset.

90. Depreciation allowances are deductible under Section 31 and are discussed below in the context of Subdivision B of Division III at paragraphs 175 to 183.

91. Sec. 32 deals with the deductibility of losses on the realization of business and investment assets/liabilities. It is the counterpart of sections 17(2)(c) and 18(2)(b), which include gains on such a realisation in calculating income from a business or investment. Under Sec. 32(1), losses on the realisation of business assets and liabilities are essentially fully deductible. This treatment is more in keeping with a Continental European approach to income tax than an Anglo-Saxon approach under which capital losses are generally quarantined and only permitted to be deducted against capital gains. Losses on the realisation of investment assets/liabilities are treated in the same manner.

92. Section 33(1) is the primary provision that controls the use of losses from one earning activity to reduce income from another earning activity. The general approach is that any loss from a business for a tax year may reduce any other income from a different business or investment for the same year but not income from an employment. Any excess business loss may be carried forward to reduce income from any business or investment of a future tax year, i.e. unlimited carry -forward. Section 33(2) essentially provides for the quarantining of certain losses. Losses from an investment are treated in the same manner as losses from a business except that they may only reduce income from an investment. Further, foreign losses sourced in a particular country may only reduce foreign income sourced in the same country. The source of income or a loss is determined in accordance with section 68, discussed below at paragraphs 140 to 146. These two quarantining rules are cumulative. The reason for this approach to quarantining was discussed above at paragraphs 35 to 39 and its content should be adjusted to local considerations.

93. Section 33(1)(c) specifically allows a person to use, by way of transfer, an unrelieved loss of an associate where the requirements in section 33(3) are met. A transferred loss does not become a loss of the transferee and once transferred is no longer an “unrelieved loss” of the associate transferor, see the definition of that phrase in section 33(8). The requirements in section 33(3) need further explanation. Firstly, one of the parties to the transfer must be an entity and neither a partnership. The transfer of losses to or from an entity enables the transfer of tax attributes. The reasons for permitting this were discussed above at paragraph 42. Secondly, the transferor and the transferee must be residents from the time the loss is incurred until it is transferred. This requirement seeks to protect the tax administration against bogus claims where the administration may have difficulty in substantiating a transfer claim. Where substantiation is not an issue, e.g. where there is good exchange of information under a double

tax treaty, this requirement may be relaxed.

94. Section 33(3) also requires common underlying ownership of at least 50 percent between the transferor and the transferee of a loss. The justification for transfer where there is 100 percent common underlying ownership is strong, i.e. the difference of identity between the transferor and the transferee is only a matter of form and not economic substance. Where the required level of common underlying ownership is less, there is potential for tax arbitrage. This level is also discussed below in the context of the non-recognition treatment of transfers of assets and liabilities under section 94, see paragraph 192. Section 94 may permit the transfer of unrealised losses on assets and liabilities between associates. It is, therefore, important that the requirements for transfer of realised losses under Sec. 33(1)(c) are similar to those for the transfer of unrealised losses under section 94. The level of common underlying ownership required by Sec. 33(3)(b)(ii) is relatively low. This level and the general availability of transfer of tax attributes under rules such as those in sections 33(1)(c) and 94 should be adjusted to local considerations. However, where one or both of these rules are adopted, broad value shifting rules such as those in sections 173 and 174 are of added importance. These are the primary rules that seek to prevent tax arbitrage through the use of sections 33(1)(c) and 94.

95. Under section 33(3)(c), a loss may only be transferred to the extent that it can be used immediately by the transferee. Therefore, a loss cannot be transferred such that it is available for carry -forward by the transferee under section 33. If this were otherwise, the common underlying ownership rule would have to be extended to the time at which the transferee uses the loss. Finally, section 33(3)(d) requires a written transfer. Further, for reasons of administrative certainty, the transfer must occur by the time for filing the relevant return of income.

96. Section 33(4) and (5) specifically pertain to losses incurred under long-term contracts and are further discussed below at paragraph 125. Section 33(6) is a specific anti- avoidance rule. Generally, non-residents are not required to withhold tax from payments with a domestic source under Subdivision A of Division II of Part V. However, under section 213 non-residents may elect to bring themselves within the withholding obligations for a tax year. Where those withholding obligations are complied with then, as mentioned above at paragraph 85, the non-resident may further elect that what would otherwise be final withholding payments derived by the non- resident during the year are not final withholding payments. This election would entitle the non-resident to claim deductions and be taxed by assessment instead of final withholding tax. Section 33(6) is designed to prevent non-residents abusing these elections by, e.g. incurring domestic source deductions in election years and not making elections in years in which domestic source amounts are derived.

Division II: Rules Governing Amounts Used in Calculating the Income Tax Base

97. As mentioned at paragraph 33, this Division deals with issues of timing the recognition of amounts used in calculating the income tax base, quantifying and characterising these amounts, and allocating them to particular persons. It begins with a subdivision devoted to some concepts that are important for the entire Sample but that are particularly central to the rules contained in the following subdivisions.

Subdivision A: Central Concepts

98. The first central concept dealt with in this Subdivision is the period by reference to which income tax is calculated. This period is referred to as the "tax year". The simplest approach to identifying this period is to require all persons to use the same tax year. However, this approach is inflexible and some persons have legitimate reasons for requesting the use

of a non-standard tax year. The typical reason of most substance involves an entity that is part of an international group where the tax accounting of the group may be performed more accurately and efficiently if it is performed according to a common period. Nevertheless, permitting persons to adopt a non-standard tax year adds to the complexity of an income tax and has the potential to open opportunities for tax reduction or deferral. Again, whether this type of permission should be available must be determined according to local considerations.

99. Section 40 provides a relatively simple example of permitting certain persons to adopt a non-standard tax year. The general rule is that all persons must use the calendar year as their tax year. The tax administration is empowered to approve an application to substitute this tax year in particular cases. This power is broad and may be subject to conditions. Further, the permission may be revoked by the tax administration and there are no express prerequisite conditions as to when the power of revocation may be used. The reason for limiting the use of non-standard tax years in this manner is, as mentioned above in the last paragraph, the potential for tax reduction or deferral. Tax reduction may be an issue where tax rates change, particularly if the change takes effect from the start of a tax year, e.g. tax years beginning after the change. One manner to address the problem of tax rate changes and non-standard tax years is to ensure that the change takes effect from a particular date. Where this date falls within the middle of a tax year of a particular person, the person could be required to calculate their income separately for the part of the year falling before the change and the part after the change. Alternately, income for the entire year may be apportioned according to the part of the year falling before and after the change. Neither option is ideal as the first increases compliance costs and the second may prove somewhat arbitrary.

100. Tax deferral through the use of non-standard tax years may be direct or indirect. Deferral will be direct if the tax payment procedure is fixed by reference to the standard tax year. For example, the tax instalment system and return and assessment procedures will not apply appropriately to persons using a non-standard tax year if they are timed for the standard tax year. For this reason it is essential that, if non-standard tax years are permitted, the tax payment procedure is timed differently for each person depending on their particular tax year. This means that different persons will have different dates for making instalment payments, filing returns, and making final tax payments. This is the approach taken in the Sample. However, this approach does raise tax administration issues. On the one hand, this approach may create difficulties for the tax administration in auditing compliance. On the other hand, it also has the potential to enable the tax administration to spread its workload over the standard tax year. Again, this is an issue for local consideration. However, if the view is taken that the tax payment procedure must run according to a uniform timetable, it is better if non-standard tax years are not permitted.

101. Tax deferral may be indirect where an entity is taxed on a pass through basis and the entity and its owners have different tax years. This is the treatment of partnerships, resident's foreign branches, and potentially trusts under the Sample. All entities are required to calculate their income separately from their owners. If the entity's income (or loss) is only allocated at the end of the entity's tax year, the usual approach, and its owners have a tax year ending after that of the entity, there is the potential for tax deferral. This potential deferral may be largely addressed by requiring the entity to pay installments of tax during its tax year. This is the approach adopted under the Sample with trusts.

102. By contrast, in the case of partnerships and resident's foreign branches, the Sample requires the partners or the owner to pay tax rather than the entity. The potential for deferral is addressed in

the case of resident's foreign branches by requiring the branch to have the same tax year as its owner. This option is not possible in the case of partnerships because the partners themselves may have different tax years. It would be possible to require partnerships to pay installments of tax in the same manner as trusts. However, given the potentially small size of partnerships and that the income of individual partners may be taxed at the lower end o f the individual tax rate scale, this option is not ideal. It would also be possible to only require certain partnerships to pay installments, e.g. partnerships other than those where the partnership and all partners have the same tax year. This would create greater complexity. The Sample does not directly address this issue of potential tax deferral in the case of partnerships other than through general powers given to the tax administration including the power to revoke the use of a non-standard tax year.

103. Section 41 includes definitions of three terms that in many ways form the backbone of the Sample. These terms have been discussed in part above at paragraphs 53, 55, and 76. The key building blocks to the income tax base are payments, whether they are made, obliged to be made, received, or entitled to be received. "Payment" is defined in section 41(1) and is intended to reflect all manners in which a financial benefit or satisfaction may be directly conferred on a person and should cover all forms of fringe benefits. It is, therefore, broader than the conventional meaning of the term "payment" and, perhaps, closer to conferring wealth on another person.

104. The definition of "payment" has a number of heads the first of which requires a direct reduction of the payer's assets or increase of the payer's liabilities by way of transfer. The second head of payment involves the creation of assets in the payee, e.g. the granting of a lease or option. It also covers the decrease of liabilities of the payee, e.g. the forgiveness of a debt or release of a guarantee, lease, or option. The third head of payment involves the provision of services and the fourth the use or availability for use of an asset owned by another. This means, e.g. that the provision by an employer of a driver, gardener, or the use of a car to an employee will constitute a payment to the employee. As these forms of payment may be continuous over a period of time, section 41(2) contains rules to divide these payments so that the payer and payee may appropriately account for them with respect to particular tax years.

105. As mentioned above at paragraphs 55 and 76, the phrases "amount derived" and "cost incurred" are variations of the concept of payment that focus on tax accounting under the Sample. That is, the timing of when an amount is derived or a cost is incurred depends on whether the person in question accounts on a cash or accrual basis. In particular, a person may derive an amount on an accrual basis where the person is entitled to the amount or incur a cost where the person is obliged to make a payment provided the other requirements of section 48(2) and (3) are met. This is why the definitions of “amount derived” and “cost incurred” incorporate references to entitlement to a payment and an obligation to make a payment, respectively.

106. The definition of "cost incurred" requires some further comment. It is limited to "payments" under the first head of that term, i.e. those involving a transfer causing a direct reduction of the payer's assets or increase of the payer's liabilities. As mentioned above at paragraph 65, in principle an income tax is targeted at creation of wealth or value added and not transfers of assets. Arguably, wealth is constituted by anything that a person is willing to pay for, i.e. has the potential to provide human satisfactions. An asset is like a store of future human satisfactions. On this view, the primary forms of wealth creation (the creation of human satisfactions or value added) are through human labour and the use of assets. Transfer of an asset is not a creation of wealth. Wealth of a person may also be created through an increase in the value of the person’s assets but equally it may be lost through a decrease in value of those

assets. Any net increase in the value of all assets of a country (capital gains) will typically form a small part of an income tax base by comparison to creations of wealth through human labour and the use of assets. Most increases in the value of assets that are recognised under an income tax only represent a relative change in prices that are offset by decreases in the value of other assets.

107. The distinction between earning activities and leisure (or consumption) means that wealth creation is typically only recognised under an income tax where it occurs in the course of an earning activity. Further, the realisations criterion means that creations of wealth (value added) are only recognised where they are paid for by a person other than the person creating the wealth or holding the asset creating the wealth. Assume a market scenario in which all payments to and by a person are balanced by a return payment by or to the person of an equal value. In this case, the value of a payment to a person for wealth created will equal the value of the wealth. Further, all wealth obtained (payments received) by a person less divestitures of assets by the person should approximate wealth created by the person. Therefore, a simple definition of the "payments" income tax base, which is typically the primary income tax base, of a person for a particular time period involves- (i) all wealth obtained (payments derived) by the person during the period in conducting an earning activity, less (ii) all assets divested of the person during the period in conducting an earning activity.

108. The first limb of the definition conforms to the basic approach under the Sample of including in calculating income all payments derived in the course of an earning activity. In order to approximate just wealth created by the person assets divested of the person are deducted under the second limb. It is towards this end that costs incurred in conducting a business or investment are deductible. It also means that the definition of "costs incurred" is limited to "payments" under the first head of that term, i.e. those involving transfer causing a direct reduction of the payer's assets or increase of the payer's liabilities. Head three and four payments made by the person represent the creation of wealth, i.e. the primary base towards which the income tax is targeted, and a deduction is not appropriate. Head two payments made by a person do not represent a divestiture by the person and so do not meet the realisations criterion, even if they result in a reduction in value of the person’s net assets. Of course, these basic rules in the Sample are supplemented by many complex rules to account for liabilities, capital gains, timing issues, and the market value and arm's length principles.

109. Section 41(5) contains what is commonly referred to as the claim of right doctrine. It is essentially an elaboration of when a person is considered entitled to or obliged to make a payment. As mentioned above at paragraph 105, this is important for determining when an amount is derived or a cost is incurred where the person in question is accounting on an accrual basis. A person is treated as entitled to receive or obliged to make a payment if the person claims to be legally so entitled or obliged, even if the person is under a misconception.

110. Section 42 causes the rules in Division II to apply to amounts recognised on a transactional basis under Division III. As mentioned previously at paragraph 34, under an Anglo-Saxon approach “capital” payments are not directly recognised under the income tax but, rather, are used in calculating gains and losses on the realisation of assets and liabilities, i.e. they are recognised under the transactional basis income tax. In essence the issue is one of event giving rise to recognition, i.e. a payment or the completion of a transaction (realisation of an asset or liability). Therefore, it seems appropriate that the same timing, quantification, allocation, and characterisation rules apply to all amounts used in calculating income irrespective of whether their recognition is directly on a payments basis or indirectly on a transactional basis.

Subdivision B: Timing of Amounts

111. This Subdivision contains the central timing provisions in the Sample. It begins in section 45 by outlining the time at which the central concept of a payment is made and received. This timing is determined by reference to the activity giving rise to the payment. Importantly, the timing of a payment is not affected by tax accounting rules, i.e. whether a person is accounting on a cash or accrual basis. By contrast, section 46 deals with when an amount is derived or a cost is incurred and, as mentioned above at paragraph 105, this is affected by the method of tax accounting used. The Sample is particular throughout in the use of these concepts of payments made and received, amounts derived, and costs incurred. For example, inclusions and deductions in calculating income from a business or investment use the concepts amounts derived and costs incurred and so tax accounting is important. By contrast, the obligations to withhold tax from certain payments under Division II of Part V use the concept of payment made and so the tax accounting method of the payer is irrelevant.

112. Section 46 recognises the cash and accrual methods o f tax accounting. It specifies use of these methods along conventional lines, e.g. the cash method is to be used by employees and the accrual method by companies. Otherwise and subject to adjustment by the tax administration, a person may choose their method of tax accounting. A person should use the method that best reflects the person's gains and profits. Which method is most appropriate for a particular person will depend on the person's circumstances and this is another area in which it may be appropriate for the tax administration to issue practice notes.

113. Sections 47 and 48 outline the content of the cash and accrual methods. The timing of amounts derived and costs incurred under the cash method is primarily aligned with the timing of the underlying payment. By contrast, under the accrual method the timing of amounts derived and costs incurred is typically an issue of entitlement to the underlying payment or an obligation to make the underlying payment. However, the entitlement or obligation is not of itself sufficient for recognition that an amount is derived or a cost incurred under the accrual method. The amount of the underlying payment must be able to be determined with reasonable accuracy and there must be what is sometimes referred to as economic performance for the underlying payment. This means that where the underlying payment is to be made or received in return for another payment, the underlying payment is only incurred or derived to the extent the other payment has been made. This is an example where the tax accounting method of the person making or receiving the other payment is irrelevant, there must be actual payment. For example, assume that a person sells trading stock to another person in return for cash. On the signing of the contract the purchaser will be entitled to the trading stock and obliged to make the cash payment and the vendor will have the opposite entitlement and obligation. However, the vendor will not derive the cash and the purchaser will not incur the cost of the cash payment under the accrual method until either the trading stock is transferred or the cash payment is made.

114. In the case where a particular payment is made between two persons accounting for tax on different bases, the intended recipient may derive the payment at a different time than the payer incurs the payment. Where the deriving is recognised for tax purposes after the incurring, there is the potential for tax deferral. Section 48(4) is directed towards tax arbitrage in this area of timing. Tax arbitrage of this type is only possible where different persons are able to use different methods of tax accounting.

115. Under section 48(2) and (3) an amount derived or cost incurred may only be recognised before the actual underlying payment is made where the amount of the payment can be determined with reasonable accuracy. If this requirement is met, the amount derived or cost incurred will be quantified by the rules under Subdivision C. Despite this cautious approach, it is possible that the actual

underlying payment, when made, will be quantified by those rules in a different amount. A classic example of this problem is where an amount of foreign currency is considered derived or incurred before payment and by the time the actual payment is made the exchange rate of the foreign currency with the domestic currency has changed. In this case, the rules in Subdivision C will ascribe a different quantity to the payment at the time it is derived or incurred compared with the quantity at the time the payment is made. If the inaccurate earlier amount is recognised for tax purposes, it is appropriate to make an adjustment at the time of payment to ensure that the person's income is accurately calculated. Section 48(5) requires these adjustments.

116. Section 48(6) to (8) detail the adjustments required under section 48(5). These adjustments vary depending on the type of payment in question, the manner in which it is recognised for tax purposes, and whether the activities that gave rise to the early recognition on an accrual basis continue at the time the adjustment is required. The adjustments in section 48(6) to (8) are rather complex and in particular cases it may be appropriate to move them to the regulations or use a more general formula.

117. Section 49 deals with an issue that is in some ways similar to that dealt with in section 48(5). Section 48(5) provides for adjustments for quantification inaccuracies that directly result from use of the accrual method of tax accounting. By contrast, section 49 provides for adjustments for inaccuracies that result from recognition of amounts that, in hindsight, should not have been recognised or that have been reversed. In particular, it covers payments that have been refunded or recovered. It does not directly cover compensation payments, which are dealt with in section 66 and typically do not involve an intention to reverse or refund a previous payment but, rather, to mitigate the economic effects of a loss.

118. Section 49 also covers a number of inaccuracies that occur under accrual basis accounting but that are not directly caused by it. These involve recognitions that require reversal rather than adjustment in the quantity recognised, the latter being covered by section 48(5). As a result of the claim of right doctrine contained in section 41(5), a person may recognise an amount as derived or incurred because the person claims to be legally entitled to receive the amount or obliged to pay the amount. Section 49 provides adjustments where the person subsequently, but prior to receipt or payment, disclaims the entitlement or obligation. In many cases, a person may not want to disclaim an entitlement to receive a payment even though it is unlikely that the payment will ever be received, e.g. where the payment right has gone bad. The right to a payment is included in the definition of "debt claim" in section 76. Accordingly, disclaiming the right to a payment will amount to a forgiveness of debt. Instead of requiring a person to forgive a debt in order to make an adjustment, section 49 permits a person to make an adjustment where the person writes off a debt as bad.

119. Sec. 49(2) places restrictions on a person's right to disclaim entitlement to an amount or write off a debt as bad. This is because the adjustments on disclaimer or writing off will often provide a reduction in income of the person in question. The manner in which financial institutions write off bad debts is often governed by prudential regulation. Sec. 49(2)(a) adopts this procedure in order to provide consistency. However, countries should consider whether their local prudential regulations are too liberal in this regard and expose the tax base to erosion. Other cases are covered by Sec. 49(2)(b), which substantially limits the circumstances in which a person may make a disclaimer or write off.

120. Section 49(3) details the adjustments required under section 49(1). These adjustments are similar to those required under section 48(5) but are somewhat simpler because in this case there is a full opposite adjustment rather than a partial adjustment up or down. If the rules in

section 48(6) to (8) are relegated to regulations or otherwise thought unnecessary, the rules in section 49(3) should be dealt with in a similar manner. Section 49 and the accounting rules in sections 47 and 48 may be applied a number of times with respect to a particular payment. For example, an expected payment (debt) may be included in calculating income on an accrual basis and subsequently deducted under section 49 if the debt is written off as bad. If the written off debt is subsequently recovered, section 48 will apply a second time to require the amount to be included again in calculating income.

121. Section 50 is targeted at a broader timing issue, the requirement that income be calculated for fixed periods. A contract that spans more than one time period may be structured such that deductible amounts disproportionately fall within early periods and amounts to be included in calculating income disproportionately fall within later periods. While in particular circumstances this situation may be viewed as appropriate, it also gives rise to the potential that persons will collude in structuring contracts so as to maximise tax deferral. This issue is similar to but not the same as the issue dealt with in section 48(4). That provision is targeted at potential tax deferral through the use of accrual basis accounting when compared with cash basis accounting. Section 50 addresses tax deferral under long-term contracts that may be available irrespective of the method of tax accounting used. Section 48(4) may apply in many cases where section 50 does not, e.g. to short-term contracts and payments under long term -contracts that do not breach the 80 percent rule in section 50 discussed in the next paragraph. Section 50 may apply in many cases where section 48(4) does not, e.g. to persons accounting on a cash basis and those accounting on an accrual basis where that accounting, of itself, does not present tax deferral over that available under the cash basis.

122. Where Sec. 50 applies, the percentage of contract completed method is used to determine when amounts are derived or costs incurred under the contract. The section only applies to “long-term contracts” as defined in Sec. 50(2). The definition has two requirements. Firstly, the contract must have a duration of at least six months and span more than one tax year. The six month period may be adjusted to suit local considerations. Secondly, the contract must be either a construction or similar contract or a "contract with a deferred return”. Contracts that constitute an interest in an entity, or that are treated in a similar manner by the Sample, are excluded. “Contract with a deferred return” is defined in negative terms in Sec. 50(8). Essentially, it is a contract under which the return is consistently 80 percent or less of that suggested by the completed-contract method. If a party to a contract can show at least once every six months that this test is not breached, the contract is not a contract with a deferred return and Sec. 50 does not apply to it. The section also applies to potential deferral under contracts where an overall loss rather than a profit is expected.

123. “Percentage of contract completed” is defined in complex terms in section 50(8). The method used to determine this percentage varies depending on the type of contract in question. For example, deferred interest to be paid at the end of the term of a debenture will be treated as derived by the holder proportionately over the term of the debenture. Under a construction contract, amounts are treated as derived or incurred proportionately to the percentage of total costs incurred. These and the other tests provided to determine percentage completed should be adjusted to local considerations. Further, these rules may be moved to the regulations.

124. A long-term contract will also constitute an asset or liability of the parties to the contract and consideration must be given to the effect of section 50 where the contract is transferred prior to its completion, i.e. under the transactional basis income tax. If section 50 accelerates profits to be derived under the contract, the transferor may pay tax with respect to

profits that will be received by the transferee. The transferee will pay for these potential profits in acquiring the contract with the result that the transferor may be taxed a second time, i.e. with respect to any gain on the realization of the contract. Any double taxation may be temporary and removed once the contract expires and the transferee effectively claims a deduction for the price paid for the contract. However, it is a relatively simple matter to ensure that the double taxation does not arise in the first place and this is achieved by the adjustments in section 50(6) and (7). These are similar to adjustments made elsewhere in the Sample such as to the basis of a partner's interest in a partnership with respect to allocations of profits and distributions of the partnership, see below at paragraphs 230 and 231.

125. Finally, as mentioned above at paragraph 96, where a loss is incurred or carried forward at the end of a long-term contract, section 33(4) may permit the loss to be carried back and set against any income from the contract of prior years (that has not been reduced by other losses). This carry-back is provided to ensure that any accelerated recognition of income as a result of section 50 does not work against the person in question. That would happen if the operation of section 50 caused a loss in the final years of the contract that, absent section 33(4), would only be available for carry forward when overall the contract did not produce such a loss or produced a loss of a lesser amount.

Subdivision C: Quantification of Amounts

126. This Subdivision contains the primary rules in the Sample for quantifying amounts used in calculating income. The central provision is section 55, which incorporates rules for quantifying a payment and through those rules quantifying an amount derived or cost incurred. The general approach is to quantify payments by reference to market value. This general approach may be inappropriate in a number of circumstances, e.g. where it is difficult to determine the extent of a payment, there is no ready market value for the payment, or the costs in determining a market value do not warrant its use. This may be the case with the provision of a motor vehicle partly for private purposes. In these types of circumstances more objective or arbitrary rules may be viewed as appropriate. Another circumstance in which a market value rule may be inappropriate is with respect to "unwanted" payments. A person may receive a payment that the person would not acquire in the market place. This can be the case with many types of fringe benefits provided to employees. In this type of case a more subjective valuation rule than the market value rule may be considered appropriate.

127. Like many other areas of an income tax, valuation rules should be adjusted to local considerations. The Sample adopts the basic market value rule but also applies examples of some different types of rules to some typically difficult areas of valuation. For example, section 55(1)(b) makes provision for more arbitrary rules in the case of the provision of a motor vehicle for private purposes. The Sample does not outline any rules in this regard but leaves them to be dealt with in the regulations, a common practice. The content of these rules often varies from country to country. In the context of employee fringe benefits, some countries use a percentage of wages, some use a flat amount per car, and in others the amount of private use is the main factor. Section 55(1)(c) provides an example of quantifying a payment according to the costs incurred by the payer in making the payment. This rule is more arbitrary than the market value rule but may be appropriate in cases where the payer is unlikely to add any substantial value to the payment over the costs incurred in making it.

128. In the case of loans at low interest rates, it may be difficult to determine what is the appropriate market interest rate in order to determine the amount of payment made in this form. As mentioned above at paragraph 84, the Sample identifies a

statutory interest rate that is likely to be on the conservative side. Section 55(1)(d) uses the statutory rate to quantify the amount of a payment in the form of a low interest loan. Many unwanted types of payments will take the form of the provision of services or the use of an asset. With respect to residual payments of this kind, the Sample adopts a more subjective approach in section 55(1)(e), valuing such payments by reference to a "reasonable person in the position of the payee". Often this will not be the market value of the payment. A common example is fringe benefits provided to government employees in developing countries. These can exceed the actual cash remuneration of such employees and are of questionable value to many of these employees. In these cases, a reasonable government employee may place a substantial discount on the market value of a particular fringe benefit.

129. Section 56 is somewhat of a supplement to section 55. It may be argued that a payment that cannot be transferred to another person or readily converted into cash has no, or a very low, market value. Section 56 overrides this argument and ensures that fringe benefits cannot easily be excluded from income of the recipient by placing restrictions on transfer or conversion.

130. Section 57 requires all amounts used in calculating a person's income to be quantified in local currency. Where an amount is not quantified in local currency, it must be converted at the time the amount is recognised for tax purposes. This approach ensures that foreign currency gains and losses are included in calculating income. This general rule can become onerous where a person is required to make numerous calculations during a tax year, such as where a person holds a foreign currency bank account and has many debits and credits during the year. In principle, each time an amount is paid from or into the account there should be a conversion. Many countries consider this approach too onerous and adopt some ameliorating rules. The Sample only adopts limited relief in this regard. The tax administration may permit a person to use an average exchange rate for conversions under section 57(3). Further, some relief may be provided in the form of the order in which foreign currency is considered realised under section 80(3), e.g. through the first-in-first-out or average-cost methods.

Subdivision D: Allocation of Income and Amounts

131. This Subdivision is concerned with the allocation of amounts to particular persons, i.e. who is considered to derive or incur an amount. Again, the Subdivision begins in section 60(1) with the central rule that a payment is made by the "payer" and made to or received by the "payee". "Payer" and "payee" are essentially identified by reference to the definition of "payment" in section 41. Section 60(2) contains a rule targeted at diverting the receipt of a payment. It gives the tax administration power to treat a person diverting a payment as the payee or payer of the payment. For example, this power may be used to collapse back-to-back arrangements. Under section 60(2), the tax administration may also treat a payment as two separate payments, first to the intended beneficiary of the payment and a separate payment by the beneficiary to the actual payee. Section 60(2) may be used by the tax administration to prevent abuse or to relax unintended effects of the Sample. For example, it may be used in cases of direct and indirect value shifting involving independent parties, see discussion below at paragraphs 285 to 287. It might also be used to treat a person as making a payment to ensure that the person receives the benefit of the payment. For example, retirement contributions made by an employer directly to a retirement fund on behalf of an employee may be treated as made by the employee to ensure that the employee can claim a reduction of taxable income under section 191. A similar example is contributions by third parties to the purchase price of an asset, which as a result of section 60(2) may be included in the outgoings of the purchaser.

132. Sec. 61 provides for allocation of amounts included or deducted in calculating income between persons holding an investment jointly. It only applies to investments because two persons conducting business jointly will constitute a partnership, see the definition of "partnership" in Sec.105. In this case, inclusions and deductions will be used to calculate partnership income and that income is allocated to partners under Subdivision B of Division II of Part III.

133. Transfer pricing also involves the allocation of amounts, but this time between associated persons. Transfer pricing is dealt with under the Sample by section 62, which applies to "arrangements" between associated persons. "Arrangement" is defined in broad terms in section 345. In the case of such arrangements, the tax administration is given power to allocate amounts to be included or deducted in calculating income between the associated persons on an arm's length basis. The provision does not go further in suggesting how the arm's length principle may be met in specific cases. This is notoriously complex and may be appropriately dealt with in regulations or practice notes.

134. Section 63 deals with an issue that is caused by progressive taxation. It is targeted at arrangements that are commonly referred to as "income splitting". Because different persons are taxed at different rates, a person being taxed at a high rate may seek to have some of their income allocated to a person taxed at a low rate. In many cases it will be possible to tax the high rate person on any "kick-back" received from the low rate person for the allocation of income. However, the "kick-back" may not always be readily identifiable, especially in dealings between associated persons, or may take an unrealised form, such as an increase in value of an asset held by the high rate person. Where persons attempt to reduce income tax in this manner and the requisite intention is present, the tax administration may adjust amounts to be included or deducted in calculating income so as to negate the reduction. Unlike the transfer pricing provision in section 62, this section is not limited to arrangements between associates and may apply even where the arm's length principle is respected.

Subdivision E: Characterisation of Amounts

135. The timing and quantity of an amount as well as its allocation to a particular person may be considered characteristics of the amount. However, in the context of income tax, a reference to, e.g. a payment being of a particular character is usually a reference to it being of a particular form or type. It is not possible to list all the forms or types that a payment may take. Some of the more important used in the Sample are annuities, capital contributions, consumption costs, capital costs, distribution of profits, natural resource payments, retirement contributions, retirement payments, repayments of capital, royalties, service fees, and wages. Another manner in which an amount may be characterised is according to its geographical source, i.e. whether the amount has a domestic or foreign source. This Subdivision deals with characterisation in the sense of the type or form and source of amounts used in calculating income.

136. Section 65 provides a general rule for characterising the type of a payment. The rule is to generally respect the legal nature of the arrangement giving rise to the payment. It is possible to adopt a substance or economic equivalence approach but this sort of approach is typically difficult to implement and creates uncertainty and inconsistency with characterisation under other areas of the law. A formal approach, such as the one adopted in the Sample, is often viewed as open to abuse. This is not the case where payments of differing characters are provided the same treatment under an income tax. It is towards this end that, to take but one example, most forms of domestic returns on capital to non-residents are subject to the same rate of final withholding tax. Where this is not possible, e.g. with respect to the

distinction between repayments of capital and returns on capital, it is necessary to supplement the formal approach. This is necessary to ensure consistency and that the income tax base is not open to substantial erosion through the re-characterisation of payments.

137. Section 66 is the first supplementary rule of this type. It concerns compensation and recovery payments. This provision is subject to section 49, which deals with the reverse of certain amounts included or deducted in calculating income. Section 49 and its relationship with section 66 were discussed above at paragraph 117. As mentioned, unlike section 49, section 66 covers payments from third parties that compensate for or represent the recovery of certain losses incurred by a person. It also covers payments for the loss of expected income and the loss in value of an asset. Section 66 does not re-characterise compensation payments according to the amount compensated for. Rather, it treats compensation payments in the manner they would have been treated if they were so re-characterised. For example, compensation for a deductible cost or lost income will be included in calculating income. This treatment is provided for in section 66(2), which is similar to the inclusive limbs of section 49(3), i.e. section 49(3)(b), (d), and (f). If the rules in section 48(6) to (8) and 49(3) are relegated to regulations or otherwise thought unnecessary, the rules in section 66(2) should be dealt with in a similar manner.

138. In contrast to section 66, section 67 actually re-characterises payments under annuities, instalment sales, and finance leases as interest and a repayment of capital paid on a blended loan. This is to ensure similar treatment between these substitutable forms of financing. Without this re-characterisation rule, payments under annuities may be considered to have purely an income character, i.e. involve no repayment of capital. By contrast, payments under instalment sales may be viewed as having purely a capital character. Payments under finance leases would be treated as the payment of rent or royalties with no part being treated as a capital payment despite substantial equivalence between a finance lease and an instalment sale. “Annuity”, “blended loan”, “finance lease”, and “instalment sale” are all defined in section 67(5). Countries with currencies particularly susceptible to devaluation may also consider re-characterising foreign currency losses on the repayment of a foreign currency loan as interest. These losses represent an interest equivalent to borrowing in local currency. Without re-characterisation, there may be a disincentive to borrowing in local currency. This will particularly be the case if foreign currency losses are deductible. In this case, withholding tax on interest paid to a non-resident lender will be less if the borrowing is in a strong foreign currency than if it is in local currency.

139. The definition of “finance lease" requires some further comment. Finance leases are treated as sales under the Sample, see section 77(3) and (4). Therefore, the definition of “finance lease” is intended to provide a list of tests where a lease may be considered essentially equivalent to a sale and, therefore, justify the treatment as a sale. As this equivalence is a grey area and one that is often utilised by tax planners, the definition is necessarily somewhat arbitrary and therefore could be adjusted to local considerations.

140. Section 68 is the central sourcing provision. It provides rules for determining not only the source of income but also losses, amounts included or deducted in calculating income, and payments. The source of income and losses are determined separately for each earning activity of a person by reference to the source of amounts included and deducted in calculating income from the activity. So, for example, income from a business with a domestic source is determined as the excess of amounts included in calculating the income with a domestic source over amounts deducted in that calculation with a domestic source. By contrast, many countries adopt a matching approach under which the source of income is primarily determined

as amounts included in calculating income with a domestic source less deductible amounts that are attributable to the inclusions, irrespective of the source of the deductible amounts. This approach is rejected as it exposes the tax base to potential erosion. This requires some further explanation.

141. As mentioned above at paragraphs 106 to 108, the income tax is primarily targeted at wealth creation or value added. In the context of domestic persons, the income tax seeks to track payments from person to person in order to identify any person by whom or in whose hands value is added and tax that person with respect to the addition. This is achieved though the netting of an intricate set of inclusions and deductions. For example, through a deduction for interest paid on a loan used in conducting a business, part of the apparent value added by a business will be allocated to the lender. Part of this value added allocated to the lender may be further allocated to other persons where the lender claims deductions. The overall system is to tax in full the net value added within a particular economy. However, if a deduction is granted against domestic value added for payments that are made outside the domestic jurisdiction, the whole of the domestic value added may not be taxed. So to allow amounts with a foreign source to be deducted in calculating domestic source income exposes the source income tax base to substantial erosion. Many developing countries experience this sort of tax base erosion by domestic activities claiming deductions for amounts paid outside the country that are not subject to withholding tax by the developing country.

142. The approach under section 68 seeks to remedy this situation by only allowing a deduction in calculating domestic source income for amounts that have a domestic source. In particular, payments that have a domestic source (for which a deduction is claimed) will typically be included in calculating the domestic source income of the payee or may otherwise be taxable, at least by way of final withholding tax. The resulting security of the tax base should ensure that the source tax base includes most all value added domestically. It should also assist in minimizing "double dipping" whereby a person claims a deduction for a cost against the source tax bases of more than one country. In any case, if the allowance of deductions is viewed in terms of a negative inclusion in calculating income, it appears anomalous that positive inclusions with a foreign source are not included in calculating domestic source income whereas negative inclusions with a foreign source may be so included. The approach in the Sample removes this anomaly.

143. Gains, losses, and allowances accounted for in calculating income are generally considered to have a domestic source where a "domestic asset" or "domestic liability" is involved. These terms are defined in sections 76 and 78, respectively, by reference to assets or liabilities held by resident persons. A branch that is situated in a country that is not the country of residence of its owner is treated as a separate person under the Sample, see section 105, and if situated domestically will be a resident person, see the discussion below at paragraph 212. Therefore, domestic assets and liabilities are essentially those held by domestic branches as well as assets and liabilities held by residents other than through a foreign branch. The exception to this general rule is with respect to land and buildings, which are considered domestic or foreign depending on their location. If the holding of land or buildings were considered, of itself, a permanent establishment, this particular exception would not be required.

144. Other amounts included or deducted in calculating income should involve an underlying payment and the source of the amount included or deducted is determined according to the source of the underlying payment. The source of payments is determined in accordance with section 68(5). The source of a payment that is a return on capital typically follows the residence of the payer. In this context, the inclusion of

foreign branches within the definition of "person" in section 105 is again important. For example, in form the source of rent and royalties follows the location of the asset giving rise to the rent or royalties. However, an asset attributable to a branch will typically be located at the same place as the branch. As a foreign branch is a separate person under the Sample, the location of such a branch will typically determine the source of rent and royalties paid by it. Again, land and buildings are treated consistently with a branch and the source of rent from land or buildings follows the location of the land or buildings. By contrast, the source of a payment for services, including remuneration of an employee, typically follows the place of performance of the services.

145. Special source rules are provided for amounts used in calculating the income of a person engaged in international transportation of individuals or tangible assets. Payments for transportation commencing domestically are generally considered to have a domestic source. Repair and improvement costs and depreciation are allowed as deductions with a domestic source with respect to tangible assets used in such transportation to the extent to which the assets are used for transportation commencing domestically. The source of other amounts used in calculating income from such transportation is determined according to the general rules in section 68. These and the other source rules in section 68 may be adjusted by double tax treaties.

146. Section 68(6) essentially provides that any amount that is not treated as having a domestic source has a foreign source. However, in some cases this is not sufficient and it is important to determine the particular foreign country in which an amount is sourced. In particular, this determination is necessary in applying the country -by-country rule for quarantining the deduction of foreign losses in section 33(2), discussed above at paragraph 92, and foreign tax offset limitations on a country by country basis under section 200(3), discussed below at paragraphs 315 and 316. Under section 68(7), the particular foreign country in which an amount is sourced is determined by applying the rules in section 68 to the country in question. In some cases, in order to determine the source of an amount it will be necessary to determine the residence of a person in a particular foreign country. This residence is determined in accordance with section 108(4), discussed below at paragraph 210.

147. Finally, the characterization or re-characterization of amounts is a fertile area for tax planning. Section 69 provides the tax administration with some broad powers to re- characterize income, losses, and amounts used in calculating income including payments. This re-characterization power extends to both the source and type of the amount in question. For this purpose, the type of an amount takes an extended meaning under section 69(2). The power in section 69 is available with respect to arrangements between associates to which section 62 applies and income splitting to which section 63 applies. It also applies to "tax avoidance arrangements" and arrangements that do not have substantial economic effect. "Tax avoidance arrangement" is determined under section 69 by reference to a main purpose to avoid or reduce tax.

Division III: Assets and Liabilities

148. This Division contains some general rules that apply to amounts the recognition of which is deferred under the income tax, i.e. that are not immediately included or deducted in calculating income when derived or incurred. In Anglo-Saxon terminology, these are often referred to as "capital amounts". Subdivision A contains rules that apply to such amounts that are dealt with on a transactional basis. This is the classic province of a capital gains tax. However, the relevance of the Subdivision is broader. It includes some important general definitions and covers issues such as the cost of trading stock and ordering rules for disposal of fungible assets. In

essence, the transactional basis is a cautious approach (used instead of the payments basis under Division I) that seeks to ensure that transfers of assets are not taxed under an income tax. Subdivision B contains rules that apply to costs incurred with respect to depreciable assets. These costs are recognized according to the wasting nature of depreciable assets with residual transactional basis recognition. Subdivision C contains a number of special rules that detail and amend some of the general rules in Subdivisions A and B including anti-abuse rules and rules to relieve hardship in particular cases.

Subdivision A: Central Concepts

149. This Subdivision begins with the general formula for the calculation of gain s and losses from assets and liabilities. Such gains may be included in calculating income under section 17(2)(c) or 18(2)(b). Such losses may be deducted in calculating income under section 32. The formula in section 75 uses a number of concepts that are central to the Sample and particularly to Division III. Gain or loss is calculated with respect to an "asset" or "liability". These terms are defined in sections 76 and 78, respectively. Gain or loss from an asset or liability is determined by comparing "incomings" for the asset or liability with "outgoings" for the asset or liability. These terms are defined in sections 81 and 80, respectively. The rules in Subdivision A provide for recognition of certain amounts on a transactional basis. This is achieved through the concept of "realization", i.e. the realization of an asset or liability determines the time at which amounts derived or incurred with respect to the asset or liability will be recognized on a transactional basis. "Realization" is defined in section 82.

150. Section 76 contains definitions of the major types of assets recognized under the Sample and section 78 contains the complementary definitions of the major types of liabilities. Many of these definitions have been previously discussed. The definitions of "business asset", "depreciable asset", "investment asset", and "trading stock" are related and require further short comment. The dominant definition in this group is "trading stock", referred to in some countries as "inventory". "Trading stock" takes its usual meaning but specifically includes work in progress on assets that will become trading stock and inventory to be incorporated into trading stock. Unlike trading stock, which may only be held by a person in conducting a business, "depreciable assets" may be held by a person in conducting a business or investment. These are wasting assets that are the primary subject of Subdivision B. "Business asset" is essentially the residual category of assets held in conducting a business. "Investment asset" is also residual in this sense but, as discussed above at paragraph 49, is central to the identification of an activity as an investment.

151. The general definitions of "asset" and "liability" also require further comment. In order to provide a broad base under an income tax, "asset" is often defined in terms of legal rights. Income taxes often do not deal with liabilities in a comprehensive manner. In order to do so, "liability" may be defined in terms of legal obligations. In this context, it is necessary to determine whether rights and obligations are to be recognized on an individual basis, e.g. on a right-by-right or obligation-by-obligation basis, or under some other grouping approach. In practice, some form of grouping approach is invariably adopted, either expressly or implicitly. This appears necessary as the individual approach to rights and obligations is likely to be administratively unworkable. Under a grouping approach, it is necessary to group rights and obligations so as to properly identify assets and liabilities for income tax purposes.

152. The conventional meanings of "asset" and "liability" are often sufficient for identification purposes. However, there will be cases producing some uncertainty. For example, while at the extremes the difference between an asset and a liability

is obvious, there will be cases where it is not clear whether a particular group of rights and obligations is an asset or a liability. Appropriate identification is important as different consequences may result depending on whether an asset or liability is involved. In particular, where amounts derived from an asset exceed costs incurred for the asset, there is a transactional reconciliation, i.e. a realization giving rise to a capital gain. This is not the case with a liability as amounts derived in respect of incurring a liability are often expected to exceed costs incurred for the liability at some stage while the liability is outstanding.

153. The definitions of "asset" and "liability" do not adopt specific grouping rules for identifying assets and liabilities. Rather, a general principles approach is adopted. The definitions make it clear that a particular asset may incorporate not only rights but also obligations and a liability may incorporate not only obligations but also rights. For example, the rights and obligations of a lessee under a lease are not separated into a group of rights and another group of liabilities. Rather, rights and obligations are grouped along traditional property lines. That is, rights and obligations typically associated with a particular form of property are grouped for the purposes of identifying assets and liabilities under the Sample. Not all rights may be viewed as falling within traditional notions of "property", e.g. there is often a question as to whether certain rights to information or know-how are property. Accordingly, the residual grouping rule groups rights and obligations that are integrated or amalgamated. If a right or obligation cannot be grouped under the residual rule, it is dealt with in isolation.

154. After grouping rights and obligations, an assessment must be made as to whether a particular group is an asset or liability. This is essentially an issue of whether the group has a positive market value or a negative market value. If the group has a positive or nil arket value at the time the rights and obligations are acquired, the group is considered an asset. If the group has a negative market value at this time it is considered a liability. In practice, it is possible that during the holding of an asset it will turn into a liability or liability will turn into an asset. However, under the Sample a group of rights and obligations is only identified as an asset or liability once, i.e. at the time of acquisition. This approach provides certainty and does not appear open to any substantial abuse.

155. Both the definition of "asset" and that of "liability" have a short inclusions head. These are essentially self-explanatory. "Part" of an asset or liability is included in order to ensure that the calculation of gain or loss provisions work appropriately where only part of an asset is realised. The definitions also have an exclusions head. The exclusion of entitlements and obligations referred to in section 48(2)(a)(i) and (3)(a)(i) is to avoid the need for reconciliation that might otherwise be required as a result of recognizing amounts under the income tax on an accrual basis before they are paid. Insurance and compensation rights are also excluded from the definition of "asset" where they are associated with a primary asset or liability. Payments under these rights will be taken into account in the calculation of any gain or loss with respect to the primary asset or liability.

156. Sections 77 and 79 provide essential rules that allocate assets and liabilities to particular persons. Gains and losses on the realisation of an asset or liability may only be included in calculating a person's income where the asset or liability realised is the person's asset or liability, see sections 17(2)(c), 18(2)(b), and 32. This allocation is to the person who "owns" an asset or "incurs" a liability and is generally made at the time that ownership begins or the liability is incurred . Section 77(2) provides a special rule applicable to arrangements under which a third party provides a business with trading stock available for sale in the ordinary course of the business where ownership in the stock does not pass by the time the stock is first available for sale. Showroom leases to car sale retailers are an example. Section 77(2) and (4) treat

such arrangements as a sale and transfer of ownership at the time the stock is first available for sale. This is essentially a substance over form rule and ensures that the provisions applicable to trading stock operate consistently. Similarly, section 77(3) and (4) treat the lease of an asset under a finance lease as a sale and transfer of the asset. Finance leases were discussed above at paragraph 139.

157. Sections 80 and 81 identify amounts that are subject to treatment under the transactional basis income tax. This identification is most important in securing a comprehensive tax base. In order to explain this importance, it is necessary to return to the conceptual base of the income tax. As discussed above at paragraphs 65 and 106 to108, an income tax is primarily targeted at wealth creation or value added. This typically has two aspects, the largest of which is likely to be through the provision of labor and capital with the smaller aspect being any net increase in the value of an economy's existing assets. The primary calculation provisions in Division I, i.e. the payments basis income tax, are intended to reflect the larger aspect. The transactional basis rules in Division III have two primary purposes. Perhaps the dominant purpose is to cover any holes in Division I. In this sense, the transactional basis rules are a large anti-avoidance rule for the dominant tax base, i.e. the payments basis income tax. The second primary purpose of the transactional basis rules is to cover the smaller aspect of wealth creation, i.e. any net increase in the value of an economy's existing assets. Where there is a net decrease in the value of an economy's assets, the transactional basis rules may give rise to an overall loss of tax revenue. Another purpose of the transactional basis income tax is to make appropriate adjustments between persons for relative changes in the value of assets and liabilities.

158. The transactional basis rules, therefore, are very broad and, absent reconciliation rules, cover any amount recognized under Division I. Under the transactional basis, amounts to be recognized are allocated to particular assets or liabilities. So, for example, if wages were not included in calculating income on the payments basis, they would be recognized under the transactional basis by allocation to the employee's employment contract. Costs incurred that are allocated to an asset are conventionally referred to as the asset's "cost base". However, as mentioned at paragraph 151, income tax laws often do not comprehensively deal with liabilities and, indeed, liabilities are sometimes treated as falling within the definition of "asset". In these types of circumstances, countries often struggle with the concept of a "negative" cost base. The "cost base" of an asset typically represents costs incurred with respect to an asset less any amounts derived with respect to the asset, disregarding any costs or amounts recognized on a payments basis. "Cost base" is therefore, typically a net concept.

159. In order to avoid the problems associated with the potential for negative cost bases, the Sample focuses on amounts that are to be recognized only on a transactional basis. Costs of this type incurred with respect to assets and liabilities are referred to as "outgoings", a term defined in section 80. Amounts of this type derived with respect to assets and liabilities are referred to as "incomings", a term defined in section 81. These amounts may be netted at any particular time, including on realization of an asset or liability, in order to calculate "net outgoings" or "net incomings" for a particular asset or liability. These terms are defined in section 345. "Net outgoings" for an asset are essentially equivalent to a conventional reference to the asset's "cost base". "Net incomings" for a liability is, therefore, equivalent to the "negative cost base" of a liability. This terminology may be adjusted to suit local considerations.

160. Further specific comment is required with respect to sections 80 and 81. Under section 80, the outgoings for an asset or liability fall under three main heads, ignoring the incidental costs head. The first only applies to assets and includes costs in acquiring an asset. These include,

where relevant, costs of constructing an asset. Section 80(1)(a)(ii) may also include amounts by way of reconciliation. It may be that the acquisition of the asset is a payment by a third party for wealth created by the acquiring person. An example is where an employer pays an employee with an asset rather than cash. The payment, being the transfer of the asset, will be included in calculating the employee's income and be taxed to the employee. It is inappropriate to tax the wealth created a second time on a transactional basis when the asset is realized by the employee. It is possible to address this reconciliation by including as an outgoing any "payment" made by the person in acquiring the asset. However, this would mean that any wealth creation that escaped Division I would not be covered by the transactional basis in Division III.

161. The second head of outgoings applies to both assets and liabilities, covering any costs incurred in owning the asset or owing the liability in question. Again there are specific inclusions, the most notable being costs o f repair and improvement. There is a similar reconciliation rule to that provided under the first head. The third head also applies to both assets and liabilities and covers costs of realization.

162. The resuming words in section 80(1) provide for some specific exclusions from the outgoings for an asset or liability. Outgoings under the transactional basis income tax are analogous to deductions under the payments basis income tax. It is, therefore, necessary to exclude "consumption costs" and "excluded costs" for similar reasons to those discussed above at paragraphs 71 to 75 in the context of section 25. The specific exclusions also provide a reconciliation rule. Amounts that may be deducted under the payments basis income tax are excluded from the outgoings for an asset or liability to prevent "double dipping", i.e. double relief for the same cost.

163. Section 80(2) is a special rule that overrides section 80(1) in determining the outgoings for trading stock. This provision is directly related to the deductible allowance granted for the cost of trading stock under section 28. Again the approach is to adopt generally accepted accounting principles in the form of the "prime-cost" and "absorption-cost" methods of costing trading stock. These and related terms are defined in section 80(4) in conventional terms.

164. Section 80(3) is also a special rule that applies generally accepted accounting principles, this time in allocating outgoings to assets that are difficult to identify. For example, the quantity and nature of particular units of trading stock held by a business may make it difficult to identify which units are sold in a particular transaction and, therefore, which outgoings should be taken into account with respect to the sale transaction. The issue may be addressed either through flexible rules for identifying the trading stock considered sold or through flexible rules in allocating outgoings to the trading stock actually sold. Section 80(3) adopts the latter approach. Where trading stock is fungible and not readily identifiable, the owner may elect to use the "first-in- first-out" or the "average-cost" method for determining the outgoings for trading stock. These terms are defined in section 80(4) in conventional terms. This identification problem is not limited to trading stock. Therefore, the application of section 80(3) may be extended to other types of assets by the regulations. The types of assets that may be considered for this treatment include securities held in entities.

165. The structure of section 81 in identifying incomings for assets and liabilities reflects the structure of section 80(1). Just as the first head of section 80(1) only applies to assets, the first head of section 81 only applies to liabilities. The second and third heads also follow similar lines to those in section 80(1). However, the reconciliation rules in section 80(1)(a)(ii) and (b)(iii) are not reflected in the first and section heads of section 81. This is because of the nature of amounts that may be included as incomings for an asset or liability.

Outgoings for an asset or liability may only include "costs incurred". As discussed above at paragraphs 106 to 108, this term is defined by reference to only the first head of the definition of "payment" in section 41. By contrast, incomings for an asset or liability include "amounts derived" in respect of the asset or liability. This term is defined by reference to all heads of "payment" and so the reconciliation rule is not required.

166. The third head of incomings includes not just amounts derived but amounts "to be" derived in respect of a realization of an asset or liability. The effect is to accelerate the recognition of such amounts under the transactional basis income tax, perhaps to an even greater extent than under the payments basis income tax. This aspect is again one of protecting the tax base and is intended to ensure that, e.g. sales with delayed payments of the purchase price do not give rise to a formal loss (with no economic substance) at the time of sale. In the case of sales, this provision will only apply to short-term delays (less than one year from the realization). Delays of a greater length will result in characterization of the sale as an installment sale. Payments under installment sales are subject re-characterization as interest and a repayment of capital on a loan under section 67, discussed above at paragraph 138. In conjunction with section 67, installment sales are also subject to a special market value rule under section 91, discussed below at paragraph 186. The reconciliation rules in the resuming words of section 81 exclude amounts "to be" included in calculating a person's income. The net result is that the third head of incomings in section 81 only accelerates the recognition of amounts that will not be directly included in calculating income. Amounts that will be so included are recognized on the payments basis.

167. The realization of an asset or liability determines the time at which amounts derived or costs incurred with respect to the asset or liability will be recognized on the transactional basis. "Realization" is defined under a number of heads in section 82(1) for assets and 82(2) for liabilities. There are a number of common heads of realization in section 82(1) and (2) and these heads fall into two broad categories. The first two heads cover situations in which the person owning the asset or owing the liability parts with that ownership or the obligations constituting the liability. The remaining heads under both section 82(1) and (2) cover situations in which the person owning the asset or owing the liability does not formally part with the ownership or obligations. Nevertheless, the situations outlined under these heads are felt to justify recognition of amounts derived and costs incurred on a transactional basis.

168. The first head of "realization" covers situations in which the person parts with ownership of an asset or the obligations of a liability. Importantly, a person need not part with the asset or liability in favor of another person. This head also covers the destruction of an asset or liability and any other manner in which an asset or liability may cease to exist. The related second head covers the situation where the person in question ceases to exist, e.g. where an individual dies. This head also applies to entities, e.g. where an entity is dissolved. The Sample adopts the approach that all gains or losses with respect to an asset or liability should in principle be allocated to the person holding the asset or owing the liability at the time the gain or loss accrues. This means that the death of an individual is viewed as the final time of reconciliation for gains or losses accruing during the life of the deceased.

169. This approach does not turn the income tax into an inheritance tax. An inheritance tax is a tax on the transfer of assets and, as mentioned above at paragraphs 65 and 106, the income tax is primarily targeted at creations of wealth. With respect to assets and liabilities passing on an individual's death, the Sample only reaches gains or losses that accrue to the deceased, the recognition of which were delayed during the deceased's life. Many

countries provide some relief from the recognition of gains at death. However, this approach almost invariably causes distortions. It will either encourage or discourage the transfer of assets before death or at the time of death. The approach in the Sample is to treat either form of transfer in the same manner. Nevertheless, the approach in section 82 may not be acceptable to particular countries and the approach should be adjusted to account for local considerations.

170. The third head of realization for assets occurs where the incomings for an asset exceed the outgoings for the asset. The reason for this head is again related to the income tax being primarily targeted at creations of wealth. The transactional approach is a cautious approach that measures wealth creation with respect to a transaction, e.g. in the case of acquisition of an asset, only when the transaction is completed, typically when ownership of the asset is parted with. To recognize incomings for an asset prior to the end of the transaction may result in the effective taxation of money or assets that were transferred by a person in acquiring the asset, i.e. money or assets reflected in outgoings for the asset. Again, the income tax is not a tax on the transfer of assets. However, where the incomings for an asset exceed the outgoings for the asset it is clear that the excess does not represent the transfer of money or assets in acquiring the asset in question, i.e. it most likely represents wealth created in the person owning the asset. It is, therefore, appropriate to tax the excess on a payments basis and this is the effect of the third head.

171. The fourth head of realization for assets deals with bad debts. Section 49 also deals with bad debts and some explanation of the interaction between the two provisions is required. Essentially, section 49 deals with debt claims that were recognized on a payments basis as an inclusion in income of the holder of the debt claim. By contrast, section 82(1)(d) deals with debt claims that are only to be recognized to the holder of the claim on a transactional basis. The classic type of debt claim to which this provision applies is a loan. The purpose of the provision is to permit a person to recognize, in particular, losses on debt claims where the debt claim has become a bad debt. The tests for determining whether or not a debt claim is a bad debt claim are essentially the same as discussed in the context of section 49 at paragraphs 118 and 119.

172. As mentioned at paragraph 107, the income tax does not typically cover wealth created through the holding of all types of assets and liabilities, it only covers assets used in an earning activity. The treatment of amounts recognised under the transactional basis income tax may vary depending on the type of earning activity in which an asset or liability is used, e.g. the varying treatment of losses under section 33. Therefore, tax arbitrage is possible, e.g. by removing an asset with an unrealised gain from an earning activity and using it in a non-earning activity such as leisure or consumption. In order to protect the tax base, the fifth head of realisation for assets deals with changes in use of certain types of assets. Where an asset of a particular type within the tax net is used in such a manner that it ceases to be an asset of that type, it is treated as realised.

173. The last three heads of realisation are the same for assets and liabilities. Foreign currency assets and liabilities, defined in sections 76 and 78, are treated as realised at the end of each year. In the absence of this provision, a person is more likely to realize foreign currency losses and seek to prevent the realisation of foreign currency gains. While this is a generic problem with transactional basis income tax, it is particularly acute in the context of foreign currency assets and liabilities, where realisation is a relatively simple matter. An alternative approach is to quarantine foreign currency losses so that they may only be set off against foreign currency gains. Again, this is an issue that should be adjusted to local considerations including any exchange restrictions. There is also a realisation of all the assets and liabilities

held by an entity where there is a change in control of the entity in the terms of section 171(1), discussed below at paragraph 281. The final head of realisation occurs where a person becomes a non- resident. This head treats as realised an asset or liability that will fall outside the tax net after the change in residence. The tax administration is granted power to override this realisation.

174. The definition of "realisation" does not cover a quasi-parting of ownership of an asset through borrowing with respect to the asset. It is often viewed as abusive that a person may borrow money on the security of an unrealised gain on an asset and thereby obtain the use of the gain without having to recognise the gain for tax purposes. There are difficulties in seeking to address this issue. One problem is allocating funds borrowed to unrealised gains and another is the requirement for market valuations. One possible approach is to adopt a presumptive rule. For example, funds borrowed by a person, unless specifically secured by an asset outside the tax net, may be considered incomings for assets of the person used in earning activities up to the market value of those assets. The person would be permitted to allocate the incomings among the assets at their selection. Such a rule may go a long way to addressing any perceived abuse of the transactional basis income tax. However, this does not reflect common international practice and is not adopted in the Sample.

Subdivision B: Depreciable Assets, Allowances, and Inclusions

175. The primary treatment of outgoings for depreciable assets under the Sample is to recognise the wasting character of such assets and provide a deductible allowance under section 31 for each tax year at the end of which a depreciable asset is held. This recognition of outgoings is provided without the requirement of a realisation. Where a depreciable asset is realised, the transactional basis income tax is applied in a residual manner by way of reconciliation with the allowance system.

176. Subdivision B pools, for each earning activity, the treatment of assets that waste at broadly similar rates. The exception is with respect to buildings and similar assets that typically have a slow wasting rate as well as intangible assets. The pooling approach is viewed as having compliance cost benefits over depreciation on an asset by asset basis with a minimal loss of accuracy, if any. Each depreciable asset is categorised as being of a particular Class by section 85(1). The inclusions in Classes 1 to 6 are intended to represent assets that will waste at similar rates. This classification is only an example, and this is another issue that should be adjusted to local considerations. Section 85(2) provides for the pooling of assets of a particular business or investment. Class 1 to 5 assets are generally pooled with all assets of the business or investment of the same class. Class 6 and 7 depreciable assets are pooled individually.

177. There are special pools required by section 85(2)(c) for assets used to transport individuals and goods. This is in order to facilitate apportionment in determining the source of a depreciation allowance under section 68(4)(b)(i), discussed above at paragraph 145. There are also special rules for costs incurred in respect of natural resource prospecting, exploration, and development. Often these costs will not be incurred with respect to a particular asset such as a mining right. This might happen where the prospecting or exploration is unsuccessful. These costs might be deductible immediately. However, the costs incurred in uncovering a viable natural resource deposit are typically low compared with the value of the deposit or right to the deposit. In many ways, the costs incurred on unsuccessful prospecting and exploration are incurred with respect to the finding of the odd viable deposit and may be allocated to it. The Sample does not adopt this allocation process directly but does provide for the depreciation of these types of costs as though they were incurred in acquiring an asset, see section 85(3).

178. Standard depreciation allowances are calculated under section 86. The general formula in section 86(2) involves the application of the relevant depreciation rate to the depreciation basis of each pool of depreciable assets at the end of a tax year. The rates are provided in section 86(6) and are mere guides that should be adjusted to suit local considerations. Only in the case of intangible depreciable assets is the rate directly determined according to the useful life of the asset. The depreciation basis of pools at the end of a tax year are determined under section 86(3) and (4) for Class 1 to 5 and Class 6 and 7 pools, respectively. Under each provision, outgoings for a depreciable asset in a pool are added to the depreciation basis of the pool. Class 1 to 5 pools are also reduced by two types of amounts. The first type of reduction is for depreciation granted. This means that depreciation allowed for Class 1 to 5 pools is calculated on a diminishing value basis. Further, the depreciation basis of a Class 1 to 5 pool is decreased by incomings for assets in the pool during the year. The main type of incoming for treatment in this manner is amounts derived in respect of the realisation of assets in the pool.

179. By contrast, the depreciation basis of Class 6 and 7 pools (buildings and intangibles) are not written down, meaning that the application of the depreciation rate produces straight line depreciation. Section 86(8) contains the necessary rule for limiting the amount of depreciation allowances under this method to the depreciation basis of the relevant pool. Whether and where the diminishing value or straight line depreciation methods are used is another issue that should be adjusted to local considerations. However, only the diminishing value method is consistent with pooling the treatment of multiple assets.

180. Section 86(5) contains a rule that may delay the inclusion of part of outgoings for a depreciable asset in the depreciation basis of the pool in which the asset is placed. Without a delay rule, there is an incentive for a person to incur costs with respect to depreciable assets just before the end of a tax year. Such a person would otherwise be granted the same depreciation allowance for the year as a person who incurs similar costs at the start of the year. The most accurate rule is to apportion the inclusion on a daily basis. For the sake of simplicity, the Sample adopts a more arbitrary approach based on quarters of a year. Only a portion of outgoings for depreciable assets is included in the depreciation basis of the relevant pool in the tax year they are incurred, depending on the quarter in which they are incurred. The balance is added to the depreciation basis of the pool during the following tax year.

181. Section 86(7) contains a special rule permitting the writing off o f small residual balances in the depreciation basis of a pool of depreciable assets. The relevant threshold must be adjusted to local considerations. Section 86(9) contains another special rule limiting the depreciation of luxury road vehicles. This is an arbitrary rule seeking to prevent a person from claiming depreciation with respect to road vehicles to the extent that they may be considered attributable to consumption or leisure activities. Road vehicles are a particular problem in this area justifying their special treatment under the Sample. Again however, this is only an example of a generic issue and such an arbitrary rule may be applied to other types of depreciable assets. This rule and the threshold it incorporates should be adjusted for local considerations.

182. Section 87 contains the residual transactional basis treatment of depreciable assets of a business or investment. This residual treatment will either result in the inclusion of an amount in calculating income from the business or investment under section 17(2)(d) or 18(2)(c) or a further depreciation allowance that is deductible in the calculation under section 31. Section 87(1) contains a special rule applicable to depreciable assets in Class 1 to 5 pools. The assets in such pools are essentially treated on a single asset basis. In this

context, section 87(1) contains a rule that reflects the application of section 82(1)(c) to other types of assets. In essence, where incomings for a person's assets in a Class 1 to 5 pool derived during a tax year exceed the depreciation basis of the pool, the excess is included in calculating the person's income.

183. By contrast, section 87(2) applies where a pool of depreciable assets is emptied by the end of a tax year, i.e. where all the assets in the pool are realised. In this case, no depreciation is allowed under section 86 in respect of the pool for the year. Rather, the transactional basis income tax is used to make appropriate adjustments by essentially comparing the written down value of the pool with incomings for the assets that were disposed of during the year. Any excess of incomings is included in calculating the income of the relevant business or investment for the year. Any excess of written down value is granted as an allowance that is deductible in calculating that income. "Written down value" for this purpose is defined in section 87(4). In the case of Class 1 to 5 pools it is essentially the depreciation basis of the pool. In the case of Class 6 or 7 pools, it is essentially the depreciation basis of the pool less depreciation allowed in respect of the pool.

Subdivision C: Special Rules

184. This Subdivision contains a number of special rules that apply to the transactional basis income tax. Many of these rules are complex, some are essentially policy issues, and so are optional, and others may or may not be appropriately dealt with by accounting rules. In all cases these rules must be adjusted to suit local considerations. The approach in the Sample is to provide an example of a relatively comprehensive set of rules that do not rely on accounting rules.

185. The first special rule deals with situations in which a person is considered to realize an asset or liability but has not formally parted with the asset or liability. These situations were discussed above at paragraphs 167 and 171 to 173. The general approach in section 90(1) and (4) is to treat realisation as at market value and to effectively reset the net outgoings or net incomings for the asset or liability to that value. In the case of the realisation of an asset by way of change of use of the asset, section 90(2) essentially permits non-recognition provided the asset stays within the tax net. Section 90(3) is a variation of this rule to cater for this type of realisation of depreciable assets, which are subject to the pooling provisions discussed above at paragraphs 176 to 177.

186. The second special rule applies a market value rule to assets realised by way of instalment sale or finance lease. This integrates with the re-characterisation rule in section 67, discussed above at paragraphs 138 and 139. Section 67 treats payments to be made under instalment sales and finance leases in excess of the market value outgoings allocated to the asset by section 91 as interest, to be included directly in calculating income.

187. Section 92 applies a limited non-recognition rule to the transfer of assets and liabilities between spouses. It only applies where the transfer is part of a divorce or separation agreement. This situation is analogous to involuntary realisations covered by section 96 but in this case the transferor need not acquire a replacement asset and an election by the transferee is required (since the transferee may be accepting an underlying tax liability). Some countries allow non-recognition of transfers between spouses on a broader basis. However, where, as under the Sample, the individual is the tax subject, a broader rule may give rise to income-splitting opportunities. A market value rule is otherwise applied in the case of transfers between spouses, see section 94.

188. Sec. 93 contains a market value rule for transfers resulting on the death of an individual. Typically, this transfer will be, in the first instance, to the deceased's estate, which will be administered by an executor or administrator. The estate will be a trust and, therefore, treated as a separate person under the Sample, see Sec. 105. As a result of Sec. 93, the

deceased may realise gains or losses from realisation of assets and liabilities that must be included in calculating the deceased 's income, see the discussion above at paragraphs 168 and 169. The executor or administrator will be required to pay any outstanding tax of the deceased by reason of Sec. 281. The estate will have market value outgoings with respect to assets transferred from the deceased and market value incomings for transferred liabilities. Any further transfer to a beneficiary of the deceased will also be treated as made at market value, see Sec. 94. The result is likely to be no gain or loss to the estate and market value outgoings for assets or market value incomings for liabilities for the beneficiary. Some gain or loss to the estate may occur in isolated circumstances, e.g. where there is substantial delay between date of death and the date of transfer to the beneficiary.

189. Special rules also apply to transfers between associates or for no consideration. These are of the typical form in section 94(1) and (4), which apply market value to the transfer except where this would result in the recognition of a loss. This exception seeks to deter "wash sales" between associates whereby persons seek to realise assets and liabilities with underlying losses by transferring them to associates while preventing realisation of any assets or liabilities with underlying gains. By contrast, section 94(2), (3), and (5) contain special rules that may allow a person transferring an asset or liability to an associate to not recognise a gain. Section 94(2) applies generally to assets within the tax net with section 94(3) catering specifically for depreciable assets, which are subject to the pooling provisions discussed above at paragraphs 176 to 177. Section 94(5) applies to liabilities within the tax net. Non-recognition under each of these rules is subject to the requirements in section 94(7).

190. The first requirement in section 94(7) is that either the transferor or the transferee is an entity. The second is that the asset or liability remains in the tax net in the hands of the transferee. For this reason, both the transferor and the transferee must be residents. Because foreign branches are treated by the Sample as persons, this means that the transfer may be between a domestic subsidiary and a domestic branch of a non-resident person. The third requirement is that there is 50 percent continuity of underlying ownership or underlying obligation in the asset or liability, respectively. Because the operation of section 94(2), (3), and (5) are likely to result in the transfer of a tax liability, the last requirement is that both the transferor and the transferee elect for the non- recognition.

191. The first and third requirements in section 94(7) are worthy of further consideration. The main justification for non-recognition treatment in transfers between associates is where there is in substance no realisation, only a change in the form of holding the asset or owing the liability. This is clear where there is 100 percent continuity of "underlying ownership" or "underlying obligation" in the asset or liability, respectively. These terms are defined in section 345. The underlying ownership of an asset owned by an entity or underlying obligation of a liability owed by an entity is determined by reference to the holding of interests in the entity. That holding is determined by looking through entities that hold interests in other entities until an individual or an entity in which no person has an interest is identified. "Interest" in an entity is defined in section 106 and discussed below at paragraph 205. Underlying ownership and underlying obligation are only relevant in the context of assets or liabilities where they are owned or owed by entities. This means that non-recognition treatment is available under section 94(2), (3), or (5) only where either the transferor, the transferee, or both are entities, i.e. non-recognition is not available for transfers between associated individuals.

192. The justification for non-recognition of gains under section 94(2), (3), and (5) is not as clear where continuity of underlying ownership or underlying

obligation is less than 100 percent. In this case, in the absence of sophisticated rules, non-recognition will give rise to the transfer of tax attributes between persons, something that is generally resisted under an income tax for tax arbitrage reasons. However, to deny non-recognition will result in a "lock-in" effect whereby persons will resist restructuring the manner in which their assets are held or their liabilities are owed for fear of realizing a taxable gain, even where restructuring may be the commercially efficient alternative. There appears no easy way to deal with this issue and the Sample adopts somewhat of a compromise. It allows non-recognition where there is continuity of underlying ownership or underlying obligation of at least 50 percent. This is consistent with the approach adopted with respect to the transfer of losses under section 33(1)(c), discussed above at paragraphs 93 and 94, and the transfer of foreign income tax under section 200(3)(b), discussed below at paragraph 316. These discussions are also relevant to the requirement that the transferor and transferee both be residents. The potential for tax arbitrage is left to the value shifting rules in sections 173 and 174. Further, the transfer pricing rule in section 62 may be applied if one of the main purposes of the transfer is the reduction of tax, i.e. to secure non-recognition the transfer must be for other main purposes, see section 94(6).

193. The non-recognition rules in section 94(2), (3), and (5) are important and have potentially broad application. They can apply to contributions to an entity in which the contributor holds a 50 percent interest, e.g. on the incorporation of a business. They can apply on the reconstruction of an entity including mergers and demergers as well as the addition and departure of partners of a partnership. They can also apply to transfers on the winding up of an entity. Whether more sophisticated rules are desired for particular cases and whether the threshold of 50 percent underlying ownership or underlying obligation is too low or even too high are issues that must be adjusted to suit local considerations.

194. Section 94 only applies to transfers between associates. It is also possible to effect the economic equivalence of a transfer between associates by the creation of a liability in one person that constitutes an asset of an associate, e.g. by granting an option to purchase an asset. Section 95 is targeted at this situation and provides a market value rule that applies to both the creation of the asset and liability and their simultaneous realization.

195. Section 96 provides non-recognition treatment for involuntary realisations by way of parting with ownership of assets or obligations of liabilities. Non-recognition is available where a replacement asset or liability is acquired or incurred within one year of the realisation. The rule is complicated somewhat by covering situations in which the replacement asset or liability is of a greater or lesser value than the asset or liability realised. These situations may result in part recognition of any gain. Non-recognition only applies where the person makes an election. The section does not define "involuntary", which will take its ordinary meaning. The application of the term to particular circumstances may be an appropriate subject for practice notes. However, "involuntary" would not cover, e.g. the exchange of securities in a merger. This is a situation in which relief is often provided in order to prevent lock-in. This lock-in is similar to that which may occur through the taxation of transfers between associates and which is addressed by section 94, see discussion above at paragraph 192. Section 96(7) provides that the regulations may treat an exchange of securities as an involuntary realisation.

196. Section 97 and 98 deal with two particularly difficult issues. The separate existence of an asset or liability (the "merging asset or liability") may be extinguished where it is combined with another asset or liability (the "combined asset or liability"). As the holder of the merging asset or liability will no longer own or owe the asset or liability, the holder will realise the asset or liability. It

is possible for an asset to be combined with an asset or a liability and for a liability to be combined with an asset or a liability. Section 97(2) provides a non-exhaustive list of some circumstances in which section 97 applies. Where it applies, section 97 provides a non-recognition of any gain or loss from the realization of the merging asset or liability with an appropriate adjustment to the outgoings and incomings for the combined asset or liability. This rule is complicated by the possibility, e.g. via section 97(1)(b), that the addition of net incomings for a merging liability may turn the net outgoings for a combined asset pre-combination into net incomings for the asset post-combination. In this case, the non-recognition rule only partly applies and a part gain may be recognised for the realisation of the merging liability. This is consistent with the approach to realisation in section 82(1)(c), i.e. where the incomings for an asset exceed the outgoings for the asset, and is appropriate for the reasons discussed above at paragraph 170. Section 97(1)(a) covers the opposite variation on this theme and may result in partial recognition of a loss on realisation of a merging asset.

197. Section 98 deals with the related issue of separation of assets and liabilities. The issue is whether the creation of rights or obligations with respect to an asset or liability is a part realisation of the asset or liability or the creation of a new asset or liability. The classic example is where a person creates a lease over an asset owned by the person in favour of another person but would also extend to cover other arrangements such as a usufruct or option. Section 98 takes the approach that where the rights are permanent there is a part realisation of the asset or liability. Where they are temporary there is no part realisation but, rather, the creation of a new asset or liability. So the granting of a lease or option with respect to an asset or liability is not typically treated as a part realisation. This is the preferred approach because it avoids problems with, e.g. persons claiming partial losses where assets are leased (due to apportionment of any net outgoings to the part realised) or the need to recognise a part re-acquisition when temporary rights expire. "Permanent" is not defined and so will take its ordinary meaning. Section 98 is subject to section 77(4), discussed above at paragraph 156, a provision that treats finance leases as sales. So even though rights and obligations under finance leases may only be temporary, they are treated as a realisation. On expiry of a finance lease, there may be a re-acquisition by the lessor of the asset, see section 77(5).

198. While section 99 is the longest non-interpretative section in the Sample, it deals with a relatively simple issue. Its purpose is stated in section 99(1) as to provide an apportionment of outgoings and incomings over more than one asset or liability in the situations described in section 99(2) to (4). Section 99(2) covers the situation in which, e.g. a person makes one payment in acquiring a number of assets with or without a number of associated liabilities such as in the acquisition of a business. Section 99 apportions the price paid as outgoings and incomings for individual assets and liabilities by comparing the market value of assets acquired and the market cost of liabilities incurred. This is the general approach adopted with respect to all the situations covered by section 99.

199. Sec. 99(3) covers the opposite situation to section 99(2), i.e. where a person transfers more than one asset or liability at the same time or under the same arrangement. For example, it covers the vendor in the sale of business example provided in the last paragraph. The third situation, covered by section 99(4), is where a person realises only part of an asset or liability and retains the remainder. Section 98, discussed above at paragraph 197, is relevant in determining if there is a part realisation. The purpose of section 99 in this situation is to apportion any net outgoings or net incomings for the asset or liability in question between the part of the asset or liability realised and the part retained.

200. The general apportionment formula is contained in section 99(5) and (6). This formula, and the related definitions and formulas in section 99(8), are complex for a number of reasons. Firstly, there is the potential that the netting of the market value of the assets and liabilities subject to apportionment does not equal the payment for the assets and liabilities under section 99(2) or (3), or may not equal the net incomings or net outgoings for the asset or liability under section 99(4). This is why section 99(5) and (6) deal with excess value and inadequate value, respectively. Complexity also results from catering for positives and negatives, i.e. the positive market value of assets as well as the negative market value of liabilities. Again, the approach under section 99 is to provide an example of a comprehensive rule. This rule may b e too complex for local conditions. It may be moved to the regulations or a more general rule adopted and the difficult issues covered by section 99 dealt with in practice notes.

PART III: RULES GOVERNING TYPES OF PERSONS

201. This Part moves to provide special rules that apply to particular types of persons or by reason of the involvement of a particular type of person in an arrangement. It is divided into three divisions. The first is again a general concepts division and contains some central definitions that are of particular relevance to particular types of persons and in considering the treatment provided by the rest of the Part. Division II is divided into a number of subdivisions that each provides special rules devoted to a particular type of person. By contrast, the rules in Division III apply generally to entities.

Division I: Central Concepts

202. This Division contains a number of definitions that are not only central to this Part but to the Sample as a whole. They are the definitions that make distinctions between different types of persons. Section 105 begins with the primary distinctions. Section 105(1) initially distinguishes between natural persons and artificial persons, i.e. individuals and entities. Non-exhaustive subcategories of individuals are "minors" and "incapacitated individuals". Exhaustive subcategories of "entities" are "partnerships", "trusts", "companies", and "foreign branches". Subcategories of "trusts" and "companies" are "controlled foreign trusts" and "controlled foreign companies". All of these terms are defined in section 105(2).

203. The reason for these distinctions is that different types of persons receive different tax treatment under the Sample. An overview of this treatment was provided above at paragraphs 17 to 32. The Sample only provides some typical examples of how different types of persons may be distinguished and the type of tax treatment that may be applied to them. In all cases these distinctions and the treatment must be adjusted to local circumstances. However, in distinguishing between different types of entities, it is important to have one category of entity as a residual type to ensure that all types of entities are covered by the income tax. This is particularly important with respect to foreign entities, which may not be easy to classify according to local distinctions.

204. The residual type of entity under the Sample is "company", which at its broadest covers unincorporated associations and bodies of persons. By contrast, "partnership" is defined in terms of persons carrying on business jointly and "trust" in terms of a trustee holding assets. Partnerships and trusts are generally excluded from the definition of "company". However, to the extent possible, tax treatment should follow the substance of an activity and not the form in which it is conducted. It is towards this end that some trusts and partnerships are treated as companies. Under the Sample, "limited partnerships" and "unit trusts", as defined in section 105(2), are treated as companies.

205. Section 106 moves to particular types of persons involved in entities. These are of

two basic types divided along the traditional distinction between ownership and management, i.e. "beneficiaries" and "managers". These terms are defined in section 106 including by way of sub-categorisation. "Beneficiary" is defined in terms of a person with an "interest" in an entity. This term is further defined by reference to a right to participate in income or capital of an entity. The form of the right is not relevant. Subcategories of "beneficiary" include "partners", beneficiaries of partnerships, and "shareholders", beneficiaries of companies. There is no separate term for the beneficiary of a trust.

206. "Manager" in relation to an entity is defined in section 106 in terms of participation in senior management decisions of the entity. Therefore, directors of a company will be considered managers of the company. The definition also includes some types of persons irrespective of such participation. These include partners, trustees, and owners of foreign branches. "Trustee" is defined in section 106 in broad terms to include any person with a fiduciary position that involves holding assets for the benefit of other persons or an object permitted by law. The inclusive part of the definition of "trustee" provides examples of arrangements that are considered trusts such as deceased estates, estates of incapacitated persons and insolvents, receiverships, and mortgagees in possession. As mentioned above at paragraph 204, the concept of "trustee" is central to the definition of "trust".

207. Section 107 deals with the important category of associated persons. Special rules apply to associated persons throughout the Sample, typically to apply arm's length treatment. By reason of their relationship, associated persons are often able to engage in tax reduction arrangements that independent persons would not. The definition of "associated persons" is very broad. Section 107(1) provides a general definition in terms of it being reasonable to expect that one person will act in accordance with the wishes of another. This is an objective test and it is not necessary that one person actually act in this manner, although that would be relevant under the test. Section 107(2) provides for specific inclusions in the concept of "associated persons", which broaden the general definition. Individuals and relatives are presumed to be associated as are partners. This presumption can be rebutted by satisfying the tax administration that in the particular case the general test in section 107(1) would not be met. "Relatives" is defined in section 107(3) by reference to three generations of individuals from a common descendant, including by way of marriage or adoption.

208. The other inclusive heads of "associated persons" in section 107(2)(c) and (d) are not subject to rebuttal and the persons referred to are associated irrespective of whether the test in section 107(1) is met. The main head in this regard is section 107(2)(d), which has particularly broad application in determining who an entity is associated with. An entity is associated with each member of a group of associated persons that, e.g. together hold 50 percent of the entity in question. An entity can be a member of the group of associated persons and section 107(2)(d) may be triggered by the inclusion of an entity in the group under a previous application of that provision.

209. For example, entity A is owned 40 percent by Y and 60 percent by Z. Therefore, entity A and Z are associated. Entity B is owned 40 percent by entity A, 40 percent by X, and 20 percent by Z. Entity A and Z are a group of persons holding more than 50 percent of entity B. Therefore, by reason of multiple applications of section 107(2)(d)(i), entity A, entity B, and Z are all associated. Further, by reason of section 107(2)(d)(ii), all other associates of entity A or entity B (e.g. their subsidiaries) or of Z (e.g. subject to rebuttal Z's relatives or partners) all fall within the group of association and are considered associates of each other.

210. Persons are also distinguished on the basis of residence. Sections 109 and 110

provide tests for determining whether different types of persons are resident. Under section 108, if a person is not resident then the person is considered a non-resident. In some cases it is necessary to determine in which foreign country a non-resident person is considered resident. As mentioned above at paragraph 146, this might be the case in applying the country -by-country limitations to the use of foreign source losses and the calculation of foreign tax offsets. Section 108(4) adapts the tests in sections 109 and 110 for this purpose.

211. Section 109 determines when an individual is considered resident. The three tests in section 109(1) follow standard lines and require little discussion other than to emphasise again that they should be adjusted to suit local considerations. If one of these tests is met for a tax year, the individual will generally be considered resident for the whole year. Exceptions to this rule are found in section 109(3) and (4). If an individual who becomes a resident for the current tax year was not a resident in the previous tax year, the individual is only considered resident from the date the individual is first present domestically during the current year. If an individual is not a resident in the current tax year, the individual is only a resident for the previous tax year up to the date the individual is last present domestically during the previous year. Being resident during part only of a tax year has certain consequences regarding tax rates and the calculation of assessable income, discussed above at paragraph 23 with respect to section 5 and also see section 15. Section 109(6) also contains a definition of "temporarily resident" for individuals. This is relevant to section 115(4), which effectively applies exemption with progression to the foreign source income of a temporarily resident individual.

212. Section 110 determines when different types of entities are considered resident. The tests for partnerships and companies follow standard lines, the latter incorporating both the place of establishment and centre of management and control tests. The tests for trusts also incorporate the place of establishment as well as residence of a trustee. Given the ease with which these tests for trusts can be avoided, a third test is added. If a resident person, with or without other persons, directs or may direct senior managerial decisions of a trust, the trust is considered resident. For example, a person who has power to remove or appoint trustees may be considered to be in such a position. Finally, a domestic branch of a non-resident person is considered a resident person. The treatment of foreign branches as persons and the inclusion of domestic branches of non- residents as resident persons ensure that domestic subsidiaries and domestic branches of non-residents are treated in a similar fashion, see further the discussion above at paragraphs 24 to 26. To further this similar treatment, domestic branches are also subject to a branch profits tax, see discussion above at paragraphs 30 to 32 and the discussion below at paragraphs 248 and 249.

Division II: Rules Applicable to Particular Types of Persons

213. This Division is divided into six subdivisions each dealing with special rules that apply to particular types of persons identified in section 105. Subdivision A is devoted to individuals. The remaining subdivisions are devoted to different types of entity. Subdivisions B to E are devoted to the main types of entity, i.e. partnerships, trusts, companies, and foreign branches. These four subdivisions follow a similar format. Each begins with a section setting out the general principles applicable under the Sample to income derived and distributed by the entity in question. These general principles were discussed above at paragraphs 24 to 29. Each of these four types of entity is treated separately from their beneficiaries and managers in calculating income. In order to ensure this treatment, each of the initial sections of these subdivisions contains a number of common provisions that require some further comment.

214. The first of these common provisions, sections 120(3), 130(4), 140(3), and 145(4), seek to emphasis this separation by stating that amounts derived and costs incurred by an entity are treated as only derived or only incurred by the entity and no other person. This is intended to avoid the argument that, while an entity that has no separate legal existence at general law can be given such an existence for tax purposes, it will have no income. For example, it may be argued that the income of a partnership is only the income of the partners. The same argument may arise in the context of assets owned and liabilities owed by entities and a similar approach is adopted to overcome this argument in sections 120(4), 130(5), 140(4), and 145(5). Similar problems arise with respect to foreign income tax paid with respect to the income of an entity. Other countries may tax the entity, the managers, or the beneficiaries with respect to such income. All foreign income tax paid with respect to an entity's income is treated as paid by the entity, see sections 120(5), 130(6), 140(5), and 145(6).

215. The final common provision in these introductory sections deals with the recognition of arrangements between entities and their managers and beneficiaries, see sections 120(6), 130(7), 140(6), and 145(7). As a general rule, these arrangements are recognised. So, for example, a partner may be an "employee" of a partnership if the partner falls within the definition of that term in section 345. Further, sales between a head office and a foreign branch and loans by a shareholder to a company will be recognised. However, all such arrangements will be subject to adjustment under the transfer pricing, income splitting, or general anti-avoidance rules in sections 62, 63, and 69. Many countries do not adopt this approach and will often ignore arrangements between an entity and its managers and beneficiaries. While this is again an issue that must be adjusted to local considerations, care should be taken to ensure consistent treatment of entities that can be used to derive income in a similar manner.

216. Because entities are treated as separate persons and their income is treated as their own, distributions or other allocation of entities' income potentially give rise to a second source of income, i.e. a source of income derived by the beneficiaries of the entity. As mentioned above at paragraphs 24 to 29, economic double taxation is generally avoided in the cases of partnerships, trusts, and resident's foreign branches but there is the potential for partial double taxation in the case of companies and domestic branches of non-residents. Nevertheless, in all cases there is a need to define this secondary tax base, i.e. the tax base of the beneficiaries with respect to their interest in an entity. This is typically the second issue addressed by Subdivisions B to E. These subdivisions then proceed to the taxation treatment of the beneficiaries when this secondary tax base is allocated to them. Finally, these subdivisions, other than Subdivision D dealing with companies, make certain adjustments to beneficiaries' interests in entities to ensure appropriate treatment under the transactional basis income tax.

217. Subdivision F deals with controlled foreign trusts and companies. It is only partly structured like the other subdivisions dealing with entities. This is because Subdivision F is essentially based on but varies the treatment that would otherwise result under Subdivisions C and D, which generally deal with trusts and companies, respectively. In essence, Subdivision F adjusts the rules in Subdivisions C and D so that they more closely resemble the rules in Subdivisions B and E, which generally deal with partnerships and foreign branches, respectively.

Subdivision A: Individuals

218. This Subdivision is relatively short, containing three sections that are particularly applicable to individuals. Section 115 allows resident individuals to claim certain personal offsets. These

offsets directly reduce income tax payable by an individual under the first head of charge in section 1(1). Any excess offset is not refundable and is lost if it cannot be used in the tax year in which it is claimed. This approach is used rather than providing an exemption threshold in the tax rates applicable to resident individuals in section 5(1) and was discussed above at paragraph 19. Its purpose is the same as an exemption threshold, i.e. to remove taxation from a basic living amount. Ideally, this amount should be sufficient to meet the bare necessities of life.

219. Section 115 provides a basic personal offset to all resident individuals. It also provides certain additional personal offsets to resident individuals for their resident "dependants". "Dependant" is defined in section 345 and is also relevant to some of the terms used with respect to retirement savings under Division II of Part IV, discussed below at paragraphs 306 to 310. The additional personal offset for temporarily resident individuals with respect to their foreign source income under section 115(4) was discussed above at paragraph 211. Finally, under section 115(5) apportionment rules apply to individuals who are only resident for part of the tax year in question. These are consistent with those in sections 5(7), and 15(2), the former was discussed above at paragraph 23.

220. Section 116 provides individuals with an offset for medical costs incurred by the individual. A deduction would typically be denied for medical costs under section 25(1)(a) because they are personal in nature. However, as with the personal offset, the medical costs offset recognises that basic medical costs are a necessity of life. This is a highly political area where the approach to the issue will invariably depend on local considerations. For governments that provide comprehensive health services to their residents, this provision may be unnecessary. Again, section 116 provides just one possible approach to the issue. In particular, the approach offered assumes the lack of a comprehensive government run health service.

221. Section 116(1) permits an individual to claim an offset for "approved medical costs". This phrase is defined in section 116(5) by reference to the regulations. Which medical costs are considered to justify a reduction in income taxation is likely to be highly subjective to particular countries. "Medical costs" is defined in section 345 in conventional terms but includes the payment of premiums for medical insurance. An individual may claim the offset with respect to medical costs paid by the individual or a dependant of the individual. The extension to dependants is consistent with the additional personal offset available with respect to dependants under section 115. Under section 116(2), the medical costs offset is calculated by applying a rate to the medical costs. This rate should represent the extent to which the government wishes to subsidise health care under the income tax system and is likely to vary substantially from country to country. Where the government provides some sort of government funded health care, the level of this rate will determine the extent to which the government wishes to encourage the use of private health care.

222. The amount of the medical costs offset that an individual may claim for any tax year is capped under section 116(3). It is limited to a "reasonable medical insurance premium" the level of which must be set locally. The idea is that the government identifies a basic level of medical insurance and uses the premiums for that as the base to calculate the limit. This limit may work harshly against individuals who opt to not have health insurance, i.e. who opt to self-insure. This is because medical costs for an individual tend to vary greatly from year to year. Where an individual incurs medical costs for which an offset is not available for a tax year, e.g. where they exceed the reasonable medical insurance premium selected, the excess may be carried forward and used in calculating the medical costs offset of the next tax year.

This method of averaging is consistent with the approach applying to losses under section 33, discussed above at paragraph 92.

223. Section 117 identifies "taxable investment income" of a minor and, therefore, the income of a minor that is subject to tax at the highest marginal rate under section 5(4). The reasons for this treatment were discussed above at paragraph 22. There is a carve out under section 117(2) to prevent this treatment in the context of an incapacitated minor.

Subdivision B: Partnerships

224. Sec. 120(1) states the general principle that partnerships are not taxpaying subjects for the purposes of the first head of charge under section 1(1). They are, however, required to calculate their taxable income and, if served with a notice by the tax administration, required to file a return of income, see Sec. 236. Any income or loss of a partnership is allocated to the partners, see Sec. 120(2). Similar to resident's foreign branches but in contrast to companies, this allocation occurs irrespective of distribution. The tax base that is used for this allocation, i.e. the secondary tax base, is defined in section 121 and is similar but not the same as the tax base used to calculate a partnership's taxable income, i.e. the primary tax base. The rest of section 120 was discussed above at paragraphs 214 to 216.

225. The secondary tax base of partnerships is defined in section 121 in terms of "partnership income" or "partnership loss". As "partnership" is defined in section 105 in terms of a business, section 121 assumes that all income and losses of a partnership will be from a business, i.e. any other joint income or loss of persons will be allocated under section 61. Partnership income is assessable income of the partnership from a business calculated as though the partnership were a resident partnership. This is in order to ensure that partnership income includes world-wide income but does not include final withholding payments and exempt amounts. In particular, final withholding payments are taxed to partnerships under the third head of charge in section 1(1). Partnership income is calculated without reference to section 33. Because partnership losses are allocated to the partners, it is inappropriate to take them into account in calculating partnership income.

226. Partnership income or partnership loss is allocated to partners under section 122(1) according to each "partner's share". This term is defined in section 122(6)(a) in terms of the partner's percentage interest in income of the partnership under the partnership arrangement. Section 122(6)(b) provides an alternative test where the primary test is inappropriate. Section 122(1) makes separate reference to the tax year of the partnership and the tax year of a partner. Issues arising where a partnership and a partner have different tax years were discussed above at paragraph 102. Importantly, the allocation to a partner only provides an inclusion or deduction in calculating the partner's income, i.e. it is not directly included or deducted in calculating the partner's assessable or taxable income. For example, this means that any allocated income may be further reduced by deductions claimed at the partner level such as with respect to interest on money borrowed to acquire an interest in a partnership.

227. Section 122(2) provides that amounts allocated to a partner retain their character in the hands of the partner, i.e. the character under the secondary tax base is determined according to the primary tax base. This allocation of individual amounts included or deducted in calculating the primary tax base, i.e. the partnership's income, is made proportionately to each partner's share. The proportionate approach goes some way to preventing abuse through the streaming of particular types of income, such as foreign income, to persons who can most efficiently use that income from a tax perspective, e.g. through use of foreign tax offsets claimed under section 200. Section 122(2) also provides a timing

rule that the partner is treated as deriving or incurring amounts allocated at the end of the relevant tax year of the partnership. This is to ensure that the allocation under section 122 and the consequent adjustments to the incomings and outgoings for the partner's interest in the partnership under section 123 occur at the same time. Further, for administrative simplicity reasons it is felt more appropriate that the allocation and adjustment only be made once per year.

228. Section 122(3) proceeds to allocate tax considered paid by the partnership with respect to its income. This allocation is at the same time and on a similar basis as the allocation of partnership income and losses, i.e. proportionately according to each partner's share. Section 122(4) treats a partner as having paid partnership tax allocated to the partner and this in turn triggers an entitlement to, e.g. a foreign tax offset for partnership foreign income tax or a tax credit for domestic income tax withheld from payments to the partnership. In particular, a tax credit may be available under section 223 for tax paid by the partnership "as though tax were withheld from a payment to the partner." As discussed below at paragraphs 313 and 331, sections 200 and 223 ensure that any such offset or tax credit is included in calculating the partner's income, i.e. they ensure gross-up.

229. Section 122(5) provides a special rule applying to non-resident partners in resident partnerships. It first treats such a partner as having a domestic branch and then, e.g. allocates domestic source partnership income under section 122(1) to the branch and not the partner. The branch will be directly liable to pay tax with respect to this income, including by way of instalment. The branch's income will be further allocated to the non-resident partner under section 148. It may also be subject to branch profits tax under the second head of section 1(1).

230. Section 123(1) includes in the outgoings for a partner's interest in a partnership amounts allocated and included in calculating the income of the partner under section 122. This is in order to remove the potential for double taxation. This may occur where partnership income is taxed to a partner but is retained by the partnership causing an increase in the value of the partner's interest in the partnership that is then sold giving rise to a taxable gain. For reasons mentioned above at paragraph 124 in the context of long-term contracts, this double taxation will only be temporary but the adjustment is incorporated because it is relatively simple in the case of partnerships. Note that adjustments to outgoings are also made under section 123 for amounts that are not allocated to partners under section 122, i.e. exempt amounts and final withholding payments. This ensures that, in the former case, preferences granted under the payments basis income tax are not washed out by the transactional basis income tax and, in the latter case, that double taxation is avoided by reason of doubling up of these two income taxes.

231. Section 123(2) makes adjustments to the incomings for a partner's interest in a partnership that reflect those in section 123(1). "Distributions" by partnerships to partners are treated as incomings for a partner, offsetting the outgoings granted under section 123(1) for allocated partnership income. "Distribution" by an entity is defined in section 165, discussed below at paragraphs 265 to 271. Further, a partner's share of non- deductible costs incurred by a partnership is included as incomings for the partner, e.g. consumption costs and excluded costs that are not deductible under section 25(1), discussed above at paragraphs 70 to 75. In this case, the inclusion is to ensure that a deduction is not effectively available for these costs under the transactional basis income tax (their non-deductibility will have increased partnership income allocated to partners and, therefore, the outgoings for the partners under Sec. 123(1)). This rule does not apply where the deduction is only deferred and will otherwise be recognised for the partnership under the transactional basis income tax, i.e. it does

not apply to outgoings for partnership assets and liabilities.

Subdivision C: Trusts

232. Trusts are treated differently from partnerships under the Sample. The general treatment of trusts is outlined in section 130. They are directly liable for tax under the first head of charge under section 1(1) with respect to their taxable income. Further, the income of a trust may be allocated and taxed to the beneficiaries of the trust in certain circumstances, see discussion of section 133 below at paragraphs 235 to 238. This allocation is a hybrid between the treatment of partnerships and resident's foreign branches and that of companies. It may occur without distribution but may be triggered by distribution. For the purposes of this allocation, it is necessary to define the secondary tax base for trusts and this is done through the concept of "attributable income" in section 131. In order to avoid double taxation of trust income, beneficiaries are also allocated any tax paid by a trust with respect to income allocated to the beneficiaries, see discussion of section 133 below at paragraph 239. The remainder of section 130 is either self-explanatory or was discussed above at paragraphs 214 to 216.

233. "Attributable income" of a trust is defined in section 131 in similar terms as "partnership income" in section 121. The discussion of "partnership income" at paragraph 225 is also relevant to the concept of "attributable income". The major difference between these two concepts is that losses of a trust may not be allocated to beneficiaries of the trust. This treatment is similar to the treatment of shareholders in companies. Losses may, however, be used at the trust level in accordance with section

234. Section 132 contains a special rule only applicable to trusts. In limited circumstances, it enables a trust to be treated in a similar manner as a partnership, i.e. not subject to income tax with respect to what would otherwise be its taxable income. This is achieved by granting a trust a deduction with respect to certain entitlements of a resident beneficiary. The entitlement must be a "vested right" to income or an amount included in calculating the income of the trust and exist during the tax year in which the trust derives the income or amount. "Vested right" is not defined and so will take its ordinary meaning. It generally means a right that is not subject to contingency. Where section 132 applies, the beneficiary rather than the trust will be liable to pay tax with respect to the income or amount by reason of allocation under section 133(2), discussed in the next paragraph. This payment of tax includes by way of instalment under section 230. In order that the payment of instalments may not be deferred, section 132 only applies where the trust and the beneficiary have the same tax year. The main benefit of section 132 is that tax is levied at the beneficiary's marginal rate instead of at the trust rate. The latter is equal to the highest marginal rate and its application may result in a claim by a beneficiary (to whom attributable income of a trust is allocated) for a refund of excess tax credits under section 301.

235. Section 133 deals with the taxation of beneficiaries of trusts and contains a number of provisions that are analogous to those in section 122, discussed above at paragraphs 226 to 228. However, unlike section 122, section 133 has two provisions that may allocate attributable income of a trust to a beneficiary. The dominant allocation provision is section 133(2). It provides for the allocation of parts of the attributable income of a trust to the trust's beneficiaries in certain conditions. As with partners, the inclusion is in calculating the beneficiary's income and not directly in assessable or taxable income. There are three heads in section 133(2) under which allocation may occur. The first is where section 132 applies, i.e. where the trust is entitled to a deduction with respect to a vested right of a beneficiary.

236. The second head of allocation under section 133(2) is less stringent. It applies

where a beneficiary is "entitled" to part of or an amount included in calculating the attributable income of a trust. "Entitled" is not defined. It will take its technical meaning under the law of trusts or otherwise its general meaning. The third head of allocation under section 133(2) applies where the attributable income or amount is actually distributed to a beneficiary. "Distribution" of an entity is defined in section 165 and is discussed below at paragraphs 265 to 271. With respect to both these heads of section 133(2), the entitlement must exist or the distribution must be made either during the trust's tax year to which the attributable income relates or within 30 days of its end. An entitlement or distribution occurring after this time does not result in allocation under section 133(2). Unless the trust in question is a non-resident trust and allocation occurs under section 133(3), this means that any tax levied at the trust level is a final tax.

237. Allocation under section 133(3) is not subject to the time limitation in section 133(2). However, section 133(3) only applies to a trust's attributable income of a year during which the trust was a non-resident trust. The reason for the difference in treatment is that non-resident trusts are not taxed on their world-wide income and when their income accrues to the benefit of a resident beneficiary, the country of residence will not be sure that an appropriate level of taxation has been suffered by the income. Shareholders of non-resident companies are treated in a similar manner with respect to dividends received from such companies. The heads of allocation under section 133(3) correspond to the second and third heads under section 133(2).

238. Section 133(4) applies a pass through of characterisation on allocation under section 133(2) similar to that in section 122(2)(a) discussed above at paragraph 227. By contrast, allocation of attributable income of a non-resident trust under section 133(3), i.e. after the year in which the attributable income is derived by the trust, does not result in the pass through of characterisation treatment. Rather, the income or amounts allocated are treated as derived by the beneficiary from an investment. Section 133(5) deals with the timing of allocation. This timing is different from that applying in the context of partnerships under section 122(2)(b), discussed above at paragraph 227. This is because the adjustments to incomings and outgoings with respect to an interest in a partnership to alleviate the potential for temporary double taxation as a result of allocation, discussed above at paragraph 230, are not made in the context of trusts. In the case of trusts, as in the case of companies, this adjustment is problematic because it is more likely that income allocated to one beneficiary may actually be distributed to another.

239. Sections 133(6) and (7) are similar to sections 122(3) and (4) and so the discussion above at paragraph 228 in the context of partnerships is relevant. In the case of trusts, however, there is greater scope for the type of tax that may be allocated to beneficiaries. Unlike partnerships, trusts are taxpaying entities and so income tax levied directly on trusts by way of withholding, instalment, or assessment as well as foreign income tax may be allocated to beneficiaries.

240. Sections 134 and 135 are designed to maximise the benefit that trusts of incapacitated individuals, estates of deceased individuals, and beneficiaries of both may derive from section 132. The intention is that, more often than not, the income of these trusts will be allocated and taxed to the beneficiaries and not the trust. In the case of trusts of incapacitated individuals, the trustee will still be liable for tax payable by the incapacitated individual by reason of section 281. However, that tax will be payable at the individual's rate and not that applicable to the trust.

241. As mentioned above at paragraph 238, the adjustments made to the interests of partners in partnerships by section 123 are not made in the context of trusts. However, like section 123, section 136 seeks to prevent the wash out under the transactional basis income tax of exemptions granted under the payments

basis income tax. Further, it seeks to prevent the double taxation that may occur were both of these income taxes to apply to final withholding payments and the attributable income of trusts. This wash out or double taxation may occur if the distribution of exempt amounts, final withholding payments, or attributable income of trusts were considered incomings for a beneficiary's interest in a trust. By contrast, this wash out and double taxation may occur in the context of companies, discussed below at paragraphs 244 to 246.

Subdivision D: Companies

242. Like trusts, companies are taxpaying subjects, see section 140(1). However, unlike partnerships, trusts, and resident's foreign branches, the income of a company will generally only be allocated to shareholders where a company distributes a dividend. Further, dividends of resident companies are taxed by means of a final withholding tax, discussed above at paragraphs 28 and 29. By contrast, dividends of non-resident companies are fully taxable in the hands of residents for the reasons discussed above at paragraph 237 in the context of trusts. In neither case, however, is tax paid by the company with respect to income that is used to distribute dividends allocated to shareholders. An exception applies in the context of controlled foreign companies, discussed below at paragraphs 260 to 262. The remaining provisions in section 140 were discussed above at paragraphs 214 to 216.

243. The secondary tax base for corporate income is "dividends". This term is defined in section 141 in terms of a "distribution" by a company that is not a "repayment of capital". Both of these terms are defined in section 165 and discussed below at paragraphs 265 to 271. Unlike the secondary tax base for partnerships, trusts, and resident's foreign branches, the definition of dividend will include distributions from amounts that are either exempt or final withholding payments in the hands of the distributing company.

244. Section 142 deals with the taxation of shareholders. As mentioned at paragraph 242, shareholders are generally taxed with respect to dividends either by final withholding tax (resident companies) or by assessment (non-resident companies). Subdivision D, unlike Subdivisions B, C, and E, does not provide for specific adjustments to the incomings for shares in companies. This is for two reasons. Firstly, as discussed at paragraph 238, in the case of trusts and companies there is no effort to seek to remove the temporary double taxation that is addressed in the context of long-term contracts, partnerships, and resident's foreign branches. Secondly, double taxation of corporate income under the payments basis income tax is intended. As mentioned at paragraph 241, this also means the wash out of exemptions granted to a company and the double taxation of final withholding payments received by a company, i.e. on distribution. At worst, this wash out or double taxation is limited to final withholding tax applied to dividends.

245. However, where the shareholder is also a company, the distribution of corporate income, exempt amounts, and final withholding payments to the corporate shareholder will give rise to yet another level of final withholding tax when the corporate shareholder redistributes these amounts. Where there is a chain of corporate shareholdings there is the potential for the final withholding tax on dividends to cascade down the chain. To ameliorate this unintended effect, section 142(2) provides that certain dividends distributed between resident companies are exempt from tax, i.e. exempt from final withholding tax. Essentially, the recipient company must hold 25 percent or more of the distributing company.

246. Section 142(3) limits the exemption in section 142(2). It is not available where the shareholder is an "exempt organisation". This term is defined in section 20 and was discussed above at paragraph 68. In this case, a dividend will be exempt only if it falls within the organisation's exemption in section 20. Section 142(2) also does not apply to

dividends distributed on redeemable shares. This is because these types of shares are highly fungible with debt. Companies in a loss position may essentially borrow funds through the issue of redeemable shares. The deduction usually associated with interest payments on debt is of little use to a company with existing losses. By contrast, if the exemption in section 142(2) applied to redeemable shares the effective lender may be exempt on the effective interest received in the form of dividends, when the lender would be taxable if interest were received. This would, in essence, provide a loss company with a mechanism for passing the benefit of its losses to a lender.

Subdivision E: Foreigner's Symmetrican Branches and Other Foreign Branches

247. Whether foreign branches, i.e. branches situated outside their owner's country of residence, are treated under the Sample as taxpaying subjects depends on where they are located. Section 145(1)(a) says that foreign branches that are situated domestically are taxed with respect to their income but the owner is not, i.e. the owner is exempt with respect to such income. These branches are also subject to branch profits tax in order to provide a similar treatment to subsidiaries owned by non-residents, see section 145(2) and the discussion above at paragraph 32. By contrast, section 145(1)(b) says that other foreign branches, i.e. those situated in foreign countries, are not taxpaying subjects, rather the owner is taxed with respect to any taxable income of the branch. In this case, the income or loss of the foreign branch is allocated to the owner, see section 145(3). By contrast, only the income of a domestic branch of a non-resident is allocated to the non-resident and not exceeding the branch's repatriated income. In either case, the allocation is made in much the same manner as under Subdivision B applying to partnerships. The remaining provisions of section 145 were discussed above at paragraphs 214 to 216.

248. The second head of income tax in section 1(1) is the branch profits tax, discussed above at paragraphs 32 and 212. Section 146 calculates the tax base for this head of income tax in terms of "repatriated income". Unlike branch profits taxes implemented by some countries that subject all profits of a branch to the tax, the approach in the Sample is to tax only those profits that have left the country. "Repatriated income" of a foreign branch for a tax year is defined in section 146 by reference to "distributions" made during the year that are not "repayments of capital". Both of these terms are defined in section 165 and discussed below at paragraphs 265 to 271.

249. The definition of "repatriated income" is similar to the definition of "dividends" in the context of companies and the discussion above at paragraph 243 of section 141 is relevant. One difference is that in the case of foreign branches the secondary tax base for branch income differs depending on the location of the foreign branch . That is, in the case of domestic branches of non-residents the secondary tax base is repatriated income and in the case of branches situated in a foreign country it is the income or loss of the branch calculated under section 147. As mentioned above at paragraph 32, this treatment of domestic foreign branches is similar to resident subsidiaries of non-residents. One difference is that in the case of subsidiaries income tax on the secondary tax base, i.e. dividends, is collected by way of final withholding tax under Division II of Part V. By contrast, income tax on the secondary tax base of domestic branches is collected from the branch through the instalment system under Division III of Part V.

250. Section 147 calculates the foreign branch income or loss of a foreign branch in a similar manner as partnership income or loss is calculated under section 121. The discussion above at paragraph 225 of section 121 is also relevant to section 147. One difference is that, as mentioned above at paragraph 247, losses of a domestic branch of a non-resident are not allocated to the non-resident. Therefore, in

calculating the foreign branch income of such a branch losses may be deducted under section 33.

251. The application of section 148 to foreign branches and their owners substantially reflects the application of section 122 to partnerships and their partners. The discussion above at paragraphs 226 to 228 of section 122 is also relevant to section 148. Section 148 is simpler than section 122 in that there is no issue of allocating the income or loss between partners. The income or loss of a foreign branch is all allocated to its owner. As mentioned above at paragraph 247, a difference from the partnership provisions is that in the case of a domestic branch of a non-resident, foreign branch income is allocated to the non-resident only to the extent of repatriated income of the branch. Further, losses of the branch are not allocated. Section 148(4) ensures that branch profits tax paid under the second head of income tax in section 1(1) by such a branch is allocated to the non-resident owner together with other income tax paid by the branch. The reason for allocating income and tax to such an owner when the owner has no direct tax liability with respect to the branch income is that this tax may be further allocated to other persons. For example, where the non-resident owner is a controlled foreign trust or company the further allocation may be to a beneficiary or associated shareholder.

252. Section 149 makes adjustments to the outgoings and incomings for an owner's interest in a foreign branch. They are the same adjustments that are made in the context of interests in partnerships under section 123. Therefore, the discussion above at paragraphs 230 and 231 of section 123 is also relevant to section 149.

Subdivision F: Controlled Foreign Trusts and Companies

253. This Subdivision differs from Subdivisions B to E in that it amends the treatment relating to certain trusts and companies under Subdivisions C and D. The approach is to treat these trusts and companies as distributing their unallocated income at the end of each tax year. This causes a treatment similar to, but not the same as, that applying to the income of partnerships and resident's foreign branches. The reason for the Subdivision is to prevent deferral of taxation by residents with respect to their foreign source income by holding funds in non-resident trusts and companies. These rules are typically complex and whether they should be adopted or not will depend on local considerations. These rules may also be adopted in a simplified but less precise form. For example, Subdivisions C and D may be entirely overridden, all income of the trust or company may be allocated to beneficiaries and shareholders at the end of a tax year, and all distributions made during the year exempted.

254. The Subdivision applies to "controlled foreign trusts" and "controlled foreign companies", phrases that are defined in section 105. These are non-resident trusts and companies in which an "associated" resident person holds an interest. "Associated persons" is defined in section 107 and was discussed above at paragraphs 207 to 209. This interest can be held directly or indirectly through other non-resident entities. For example, Company A and Trust B are non-residents and Z is a resident. Company A holds 51% of Trust B and Z holds 51% of Company A. By reason of section 107(2)(d)(i), Company A and Z are associates. Further, Z holds a direct interest in Company A and so Company A is a controlled foreign company. Further, by reason of section 107(2)(d)(i), Company A and Trust B are associates and, by reason of section 107(2)(d)(ii), because Company A is also associated with Z, Trust B and Z are also associates. As Z holds an indirect interest in Trust B, i.e. through Company A, Trust B is a controlled foreign trust.

255. The definition in section 105 is further extended where this association with the non- resident company or trust would be met if not more than five residents were associated. For example, V, W, X, Y, and Z are non-associated residents that each

hold 12 percent of Company C, a non-resident company. If V, W, X, Y, and Z were associated, they would each be associated with Company C by reason of their aggregated holding in the company exceeding 50 percent, see section 107(2)(d)(i). Therefore, as they hold an interest in Company C, Company C is a controlled foreign company.

256. Section 156(1) defines "unallocated income" of a controlled foreign trust or company. In the case of a trust, this is the trust's "attributable income" under section 131 for a tax year less the amount of that income that is allocated under section 133(2) for the year. The discussion above at paragraphs 233, 235, and 236 is relevant in this respect. The "unallocated income" of a controlled foreign company is also its "attributable income" but this time less dividends distributed during the year. "Attributable income" of a controlled foreign company is defined in section 156(2). It is similar to the definition of that term in the case of trusts in section 131 and the discussion above at paragraph 233 is relevant.

257. Section 157(1) provides for the distribution of unallocated income of a controlled foreign trust or company. The provision only applies to a trust or company that is a controlled foreign trust or company at the end of the tax year in question. Any attempt by a resident person to divest themselves of an interest in a non-resident trust or company just before the end of the year in order to avoid the allocation under this provision may be thwarted by section 69, the general anti-avoidance rule. This may particularly be the case if the interest is re-acquired shortly after the end of the year. Unallocated income is generally treated by section 157(1) as distributed in accordance with beneficiaries rights to the income. In some cases this allocation may be difficult, e.g. in the case of a discretionary trust or a company with different classes of shares. In this case, the tax administration is given power to provide an allocation.

258. The amount treated as distributed to the beneficiaries will be included in calculating the income of the beneficiaries. In the case of resident beneficiaries, this will be assessable income, e.g. under section 18 including by way of section 133(2)(c) or (3)(b), and, therefore, may be taxed under the first head of income tax in section 1(1). Importantly, where the beneficiary is a partnership, trust, or foreign branch, the distribution will be included in calculating the entity's partnership income, attributable income, or foreign branch income, respectively. Similarly, if the beneficiary is also a controlled foreign trust or company, the distribution will be included in calculating the unallocated income of the trust or company. Returning to the example above at paragraph 254, assume that Company A and Trust B do not have any distributions or allocations for the tax year in question. In this case, section 157(1) will allocate 51 percent of the unallocated income of Trust B to Company A, which will be included in calculating the unallocated income of Company A. 51 percent of the unallocated income of Company A will be allocated to Z. The effect is to allocate 26% of the unallocated income of Trust B to Z.

259. Income that is treated as distributed ("allocated") in one year may actually be distributed in a future year. If both the allocation and the distribution are taxed, there is double taxation. Section 157(2) seeks to relieve this double taxation by granting a beneficiary a deduction for amounts allocated under section 157(1). The deduction is only permitted in a tax year after the tax year of allocation and only to the extent of allocations under the general provisions applicable to trusts and companies for the future year, e.g. allocation under section 133(3) and distributions of dividends. The exception is that in the case of a controlled foreign trust, the deduction can be used in the year of allocation under section 157(1) to the extent of allocations made under section 133(3) for that year. This allocation is similar to dividends distributed by companies out of prior years' attributable income. However, under section 156(1), these distributions

reduce a company's unallocated income but allocations under section 133(3) do not reduce the unallocated income of a trust.

260. Section 157(3) applies to controlled foreign companies in a similar manner as sections 122(2), 133(4), and 148(2) apply to partnerships, trusts, and foreign branches, respectively. The above discussion of those provisions at paragraphs 227, 238, and 251 is relevant to section 157(3). Section 157(3) only applies to controlled foreign companies whereas section 133(4)(a) will apply to amounts treated as distributed by controlled foreign trusts by section 157(1). Unlike, Subdivisions B, C, and E, Subdivision D does not provide for the pass through of characterisation on the distribution of dividends by companies. That is, dividends typically have the character of dividends and do not take their character from the income of the company from which they may be considered distributed. Section 157(3) provides an exception to this rule. The main reason for this is to facilitate underlying foreign tax relief, relief that is often automatically available in the case of partnerships, trusts, and foreign branches, see further the discussion below at paragraphs 311 to 316.

261. Section 157(3) applies to all dividends distributed by a controlled foreign company and not just those treated as distributed by section 157(1). However, in order to receive the pass through of characterisation treatment, the recipient of the dividend must be an associate of the company. This provision does not contain the additional requirement that the recipient also be a company, as is often found in underlying foreign tax relief systems in practice. In the context of what is close to full dividend relief for shareholder and corporate income taxes under the Sample, see the discussion above at paragraphs 28 and 29, this restriction does not seem appropriate. Further, there does not seem to be any situation in which this approach can be abused to reduce taxation. If countries wish to restrict underlying foreign tax relief only to resident companies, it is a relatively simple matter to add this requirement to section 157(3).

262. Sections 157(4) and (5) correspond to sections 122(3) and (4), 133(6) and (7), and 148(3) and (5) applying in the cases of partnerships, trusts, and foreign branches, respectively. The above discussion of those provisions at paragraphs 228, 239, and 251 is relevant to section 157(4) and (5). Section 157(4) and (5) also only apply to controlled foreign companies. Section 133(6) and (7) will apply in the context of controlled foreign trusts. Section 157(4) and (5) allocate tax paid or treated as p aid by a controlled foreign company to distributions to which section 157(3) applies. The effect is that shareholders associated with a controlled foreign company will be proportionately allocated tax of the company with distributions of the company. As such tax is treated as paid by an associated shareholder, the shareholder will be entitled to foreign tax offsets under Sec.200 with respect to the tax. Sec. 157(3), (4), and (5) may have an extended operation by reason of Sec.175(3). The effect is that domestic income tax paid by a resident company is allocated to non-resident associated shareholders with dividends received from the company. If such a shareholder is also an entity, the domestic tax may be further allocated (as foreign income tax) and, if allocated to a resident beneficiary, the beneficiary may claim foreign tax offsets for the underlying domestic tax.

263. Finally, section 158 supplements the treatment of outgoings and incomings for interests in trusts and companies discussed above at paragraphs 241 and 244. It is targeted at removing the potential temporary double taxation towards which section 123 and 149 are targeted in the context of partnerships and foreign branches, respectively. To that extent, the above discussion of those provisions at paragraphs 230, 231, and 252 is relevant.

Division III: General Provisions Applicable to Entities

264. This Division contains a number of provisions that apply commonly to partnerships, trusts, companies, and foreign branches. The Division is predominantly directed towards issues arising as a result of the potential overlap of the payments basis income tax and the transactional basis income tax. This is a complex area because entities effectively create two levels of transactional basis income tax, a direct one at the entity level and an indirect one with respect to interests in entities held at the beneficiary level.

265. Section 165(1) begins by defining the central concept of "distribution" by an entity. This definition is particularly important with respect to the taxation of entities and their beneficiaries. Distributions are often included in calculating income of beneficiaries under the payments basis income tax, e.g. by section 18(2)(a) and 133(2) and (3) with respect to companies and trusts, respectively. They are also taken into account under the transactional basis income tax, e.g. by sections 123 and 149 with respect to partnerships and foreign branches, respectively.

266. "Distribution" is defined in terms of a "payment" by an entity to a beneficiary. "Payment" is defined in section 41, see above discussion at paragraphs 103 and 104. "Distribution" potentially includes any payment by an entity to a beneficiary irrespective of the capacity in which the beneficiary receives the payment, e.g. whether received as beneficiary, employee, purchaser, or debt holder. Given the broad definition of "payment", the definition of "distribution" is very broad but is subject to exclusions. A payment by an entity to a beneficiary is not a distribution to the extent that the beneficiary makes a return payment of an equal amount. For example, to the extent that a beneficiary pays market value for goods sold by the entity, the transfer of the goods by the entity is not a distribution. Further, to the extent that the payment is, otherwise than as a distribution, included in calculating the income of a beneficiary it is not a distribution by the entity. The same is true where the payment is a final withholding payment of the beneficiary.

267. Section 165(2) sub-categorises distributions by entities. These sub-categories often result in differing tax consequences. Under section 165(3), a distribution can only be a distribution of profits or a repayment of capital if it effectively reduces the distributing entity's resources. This means that these types of distributions will typically involve payments under the first limb of the definition of "payment" in section 41 but may involve a payment under the second limb of that definition. Section 165(4) then contains a profits-first rule. To the extent that the market value of an entity's assets exceeds the market value of its liabilities and capital contributions, a distribution of this type is a distribution of profits. To the extent there is no such excess, a distribution of this type is a repayment of capital. This general profits-first rule is used to minimise the potential for tax arbitrage, e.g. by entities streaming repayments of capital to taxable persons and distributions of profits to exempt persons. Often commercial law adopts a profits-first rule, although usually only for companies. Whether this tax law profits-first rule is necessary should be assessed according to local considerations such as these.

268. Section 165(5) contains an exception to the profits-first rule in certain cases of termination of interests in entities including buy-backs. The exception only applies where distributions made in these circumstances are not referable to a share of profits of the entity. Further, the entity must terminate sufficient of the beneficiary's interest in the entity that after the termination the beneficiary is no longer an "associate" of the entity. "Associate" is defined in section 107 and discussed above at paragraphs 207 to 209. This means that it is not necessarily sufficient for the beneficiary to part with all their interests in the entity. The beneficiary must also sever all substantial

connections with the entity including, e.g. any indirect holdings and holdings of relatives. Where these conditions are met, the profits-first rule is replaced with a rule considering the distribution as proportionately a distribution of profits and a repayment of capital. For example, this provision will apply when entities are liquidated.

269. In order to balance the broad definition of distribution of profits, section 165(6) contains a broad definition of "capital contribution". Under section 165(4), capital contributions effectively reduce the amount of distributions considered distributions of profits and increases those considered a repayment of capital. Reflecting section 165(1),a "capital contribution" is potentially any payment under the first or second limb of the definition of "payment" in section 41, discussed above at paragraphs 103 and 104, made by a beneficiary or potential beneficiary to an entity. The exceptions are to the extent that the entity makes a return payment to the beneficiary or the payment is an exempt amount, final withholding payment, or included in calculating the entity's income. Despite the broad definition, some informal value transfers to an entity will not be a capital contribution. An example is a gift to an entity that is made "in respect of" a business or investment of the entity, which must be included in calculating the entity's income under section 17(2)(f) or 18(2)(e). These provisions do not apply in the case of gifts by associates of an entity, the most likely type of beneficiary to make a gift to an entity. Such gifts by such a beneficiary will be treated as a capital contribution. Further, if the "in respect of" nexus is not met, a gift to an entity by a beneficiary will be a capital contribution in any case. Capitalisations of profits are also not a capital contribution and the distribution of capitalised profits by an entity will be a distribution of profits.

270. Section 166 is a short provision setting out the treatment of an entity with respect to capital contributions to and distributions by the entity. The approach under the Sample is, from the perspective of an entity, to ignore interests in the entity. It would be possible to set up a consistent treatment, particularly under the transactional basis income tax, by treating interests in entities as liabilities of the entity. This treatment would, perhaps, be closer to economic reality. However, it is not an approach used in practice and is not used in the Sample. Accordingly, the definition of "liability" in section 78 specifically excludes an entity's rights and obligations with respect to an interest of a beneficiary in the entity.

271. Any distribution of an entity that is not a distribution of profits or a repayment of capital is a "distribution of a collateral benefit", see section 165(7). These distributions will typically consist of payments under the third and fourth limbs of the definition of "payment" in section 41, discussed above at paragraphs 103 and 104. The effect of distributions of this type is to cause an entity to not derive income but, rather, provide a benefit directly to the beneficiary, i.e. the distribution to the beneficiary represents notional income of the entity. For example, a company may have a property available for rent but permits a shareholder to stay in it for free. There are two approaches to the taxation of this type of benefit. One is the same as is used in the context of employee fringe benefits. The notional income of the company may be ignored and the benefit fully included in calculating the income of the beneficiary.

272. This approach appears inconsistent with taxing corporate income twice under the Sample, i.e. once to the company and a second time by way of final withholding tax on distribution. The alternate approach is to include the notional income in calculating the income of the entity and otherwise treat the distribution of a collateral benefit in the same manner as any other distribution of profits. This is the approach taken in the Sample under section 167(1). This issue could also be addressed through an equalization tax by requiring entities to match distributions with taxed profits and to the extent they cannot impose a make-up tax. However, an equalization tax will have other effects.

It may also tax distributions of unrealized gains and wash out other preferences such as direct exemptions and foreign tax relief. This treatment is inconsistent with the treatment of income derived directly by individuals and has been avoided in the Sample on that basis. A more principled approach to the quasi-realisation of unrealised gains, e.g. through borrowing, was discussed above at paragraph 174.

273. Nevertheless, section 167(1) does create some inconsistency with the treatment of individuals. Individuals are not taxed with respect to notional income, e.g. notional rent is not allocated under the Sample to individuals who live in their own homes. In the context of an individual, this is consistent with the basic approach under the Sample of not taxing wealth created unless it is paid for by a third party, see discussion above at paragraph 107. In the context of an entity, it may be argued that the entity is being paid for wealth created that is represented by distributions of collateral benefits, i.e. the beneficiaries pay in the form of allowing to entity to use their capital. Even if the entity is looked through, often it will be a group of persons managing and owning the entity that will be receiving the payment in the form of the use of capital. In these circumstances, the taxation of the notional income to the entity may be justified.

274. While this justification for taxation appears convincing in the case of widely held entities, it is less so in the case of closely held entities, particular those acting in a passive manner. In this case, as the beneficiary may have conducted the passive activity directly, to tax the entity's notional income but not to tax if the beneficiary conducts the activity is to prefer form over substance. To this end, section 167(2) adopts a limited exception to section 167(1). The exception only applies to entities that are closely held by individuals and where the collateral benefit is provided outside the course of a business of the entity. Similar to the case of individual in the same situation, deductions are denied for amounts to the extent that they relate to the provision of the collateral benefit. For example, this exception may apply where a deceased individual places the family home in trust and the surviving spouse is permitted to live in the home rent free. By reason of section 167(2), the notional rent will not be taxable to the trust but the trust cannot claim deductions with respect to the home, e.g. rates and utilities.

275. Section 168 essentially applies the market value rules in sections 94(1) and (4) and 95 to dealings between entities and their beneficiaries. In this context, the above discussion of those sections at paragraphs 189 and 194 is relevant. The main difference between section 94(1) and (4) and section 168(1) and (2) is that under the latter provisions the transferor may incur a loss on the transfer. Where the entity and the beneficiary are associates, section 94(1) and (4) will override section 168(1) and (2) to deny any such loss. Section 168 only applies with respect to the transactional basis income tax. A transfer of an asset or liability between an entity and a beneficiary may give rise to a gain or loss from the realisation but may also result in a distribution by the entity or a capital contribution to the entity, e.g. where excessive or inadequate consideration is provided for the transfer.

276. Section 168(4) expressly excludes section 168 from applying to dealings in interests in entities between the entity and a beneficiary. The issuing of interests in entities is governed by section 169. It also applies to the transfer by an entity of an interest in itself, e.g. treasury stock. The general approach in section 169(1) is consistent with section 168 in applying a market value rule to the new beneficiary. The only circumstances in which a person is likely to acquire an interest in an entity from the entity for other than market value is where the person either already holds an interest in the entity or where the person is an associate of the entity. Where market value is not paid, there is an effective value shift either to or from the existing interests in the entity, except in some circumstances outlined in section 169(2). Such a value shift may be abusive where it is to or from a person associated with the entity. Value shifts of this type are

dealt with in sections 173 and 174 and are discussed below at paragraphs 289 to 295. The market value rule in section 169(1) is consistent with these rules.

277. Section 169(2) and (3) apply an exception to the market value rule in section 169(1). They apply where the beneficiary already holds an interest in the entity, the new interest is issued or transferred in respect of the existing interest, and there is a value shift between the two interests. They do not apply where there is an effective value shift between interests of different beneficiaries of the entity. In particular, section 169(2) applies to a proportionate bonus issue to all beneficiaries in an entity. It also applies where the difference between the amount paid by a beneficiary for the new interest and the market value of the interest is balanced by an opposite change in value of the beneficiary's existing interest. Where section 169(2) applies, section 169(3) substitutes the market value rule with a rule that spreads the net outgoings for the old and new interests over both interests according to their market value.

278. The cancellation of an interest in an entity or the transfer of such an interest to the entity, e.g. in the case of a buy back, typically gives rise to both payments basis and transactional basis income tax consequences. Any payment by the entity to the beneficiary for the cancellation or transfer will be a distribution by the entity. Any part of this distribution that is not a repayment of capital may be subject to payments basis income tax treatment, depending on the type of entity involved. Any part that is a repayment of capital is subject to transactional basis income tax treatment. The extent to which such a distribution is a repayment of capital is determined under section 165, discussed above at paragraphs 265 to 269. The quantity of such a distribution is typically determined in accordance with section 55. Section 170(1) provides an exception to this approach where the entity and the beneficiary whose interest is cancelled or transferred are associates. In this case the beneficiary is treated as receiving a market value distribution for parting with the interest in the entity. This is consistent with the approach in sections 94 and 95. Section 95 would not apply in this case because section 78 specifically excludes an entity's obligations with respect to an interest in the entity from the definition of "liability".

279. Where an entity purchases an interest in itself on a recognised stock exchange, section 170(2) provides an exception to the combination payments basis and transactional basis income tax treatment discussed in the last paragraph. The reason for this exception is that beneficiaries selling on the stock exchange will typically be subject to transactional basis income tax treatment only with respect to amounts derived for the sale. Further, due to the anonymity of sales in the ordinary course of business on a stock exchange, a beneficiary will not know that it is the entity that is buying the interest. Section 170(2) seeks to ensure that a beneficiary has the same tax consequences in these circumstances irrespective of who is the buyer. This rule may not be necessary for countries that do not permit entities to buy interests in themselves.

280. Section 170(2) effectively provides the selling beneficiary with transactional basis income tax treatment only. The entity is then treated as the holder of the interest in itself and cancelling that interest for a payment equal to the one made to the beneficiary for the interest. This deemed payment would be divided into a profits portion and a repayment of capital portion calculated in accordance with section 165(5). The profits portion may be subject to, e.g. dividend withholding tax. The capital portion will be treated as received in respect of the cancellation of the interest. This may result in a loss for the entity from the realisation of the interest. The overall effect of section 170(2) is similar to that which would have applied to the beneficiary if both the payments basis and transactional basis income taxes were applied as usual. The difference is that the entity may realise a loss that is offset by

the beneficiary realising a smaller loss or realising a gain from the sale.

281. Sections 33(1)(c), 94, and 200(3)(b) permit, in limited circumstances, the direct transfer of tax attributes to and from entities, see discussion above at paragraphs 93 to 95 and 189 to 193 and below at paragraph 316. As mentioned at paragraph 42, this is essentially an issue of looking through the form in which a business or investment is held and looking to economic substance. Section 171 is of an opposite nature in seeking to prevent an indirect transfer of tax attributes of an entity to persons who do not own or are not commonly owned with the entity. A provision of this nature is recommended in order to prevent tax arbitrage irrespective of whether the corresponding provisions are implemented to permit the direct transfer of entity tax attributes. Section 171(1) prevents the carry forward of tax attributes under the transactional basis income tax. It treats an entity as realizing all its assets and liabilities where there is a change of 50 percent or more in the underlying ownership of the entity within a three year period. This level of underlying ownership is consistent with that required for the direct transfer of tax attributes to associates. Section 90, discussed above at paragraph 185, will apply a market value rule to the realisation. The result is that the entity will realise any previously unrealised gains and losses just before the change. This, combined with section 171(2), prevents the purchaser of an entity indirectly obtaining access to these tax attributes.

282. Section 171(2) denies the carry forward of certain tax attributes o f an entity under the payments basis income tax where a change in ownership of the entity occurs. The provision also applies to the carry back of tax attributes, where that is possible. The tax attributes described in section 171(2) are self-explanatory. Section 171(1) and (2) may apply in tandem, e.g. where section 171(1) causes the realisation of a loss that is not available to be carried forward by reason of section 171(2)(a). Section 171(3) applies the rules in section 171(2) to parts of tax years.

283. Section 172 is also of an anti-abuse nature. It is primarily targeted at the indirect removal of profits from an entity in a manner that avoids taxation that would occur if the profits were distributed, e.g. the final withholding tax on dividends. This might occur, e.g. where a foreign parent sells shares in a domestic subsidiary (with retained profits) to another resident company (the "acquirer"). The acquirer may try to remove the profits exempt from tax by reason of section 142(2), discussed above at paragraphs 245 and 246. Further, the foreign parent will not be subject to tax on a transactional basis with respect to any gain on the shares realised. The shares will not be “domestic assets” as defined in section 76, so the gain will not have a domestic source by reason of section 68(3)(a), and, therefore, the gain will not be included in the parent’s assessable income under section 15(1)(b). Such a scheme would only result in deferral of the dividend tax since the dividend tax would be levied whenever the subsidiary’s profits were ultimately redistributed to a shareholder not entitled to the benefit of section 142(2). However, as the distribution is likely to cause the value of the shares in the subsidiary to drop, there is also the potential for the acquirer to throw up a loss by disposing of the shares post distribution.

284. Section 172 addresses this situation by treating the payment by the acquirer to the foreign parent for the shares in the subsidiary as a distribution of dividends by the subsidiary to the parent. Such a payment would, therefore, give rise to a final withholding tax liability. This treatment will also reduce the outgoings of the acquirer for the shares in the subsidiary, removing the potential for any loss where those shares are further realised by the acquirer.

285. Sections 173 and 174 provide rules that seek to restrict arbitrage that might otherwise occur due to the dual application of the transactional basis

income tax and its interaction with the payments basis income tax where entities are involved. In particular, it is targeted at the shifting of value between assets and liabilities held in an entity by persons who are associates of the entity. Value shifting may occur in other cases, e.g. the cancelling of one direct interest in an asset that causes another direct interest in the asset held by an associated person to increase in value. This form of value shifting does not involve an entity and is not specifically dealt with by the Sample. Rather, it is viewed as an issue of identifying a transfer and, therefore, a payment. The cancellation will effect a transfer of the person's interest in the asset to the associate. Section 94(1) will typically provide market value treatment for such a transfer. Where the transferred interest merges into the associate's existing interest, it will be a cost incurred in improving the existing interest and so included in the outgoings for the existing interest.

286. By contrast, value shifting between independent parties is viewed as an issue of allocation of payment under the Sample. For example, a person downgrades a right against a third party in return for an associate of the third party granting rights to an associate of the person. The granting of rights by the third party's associate is a payment under section 41(1) (b). Under section 60(2) the tax administration may treat the payment as made to the person in respect of the downgrade of that person's right. It would, therefore, be treated as an incoming with respect to the downgraded right. The same approach applies where the rights or liabilities are held in an entity that is not an associate of the person holding the rights. For example, the same approach would apply where an interest of a beneficiary in an entity is cancelled by the entity but a subsidiary of the entity issues an interest to an associate of the beneficiary.

287. Importantly, this treatment of value shifting cannot be avoided through the use of back-to-back arrangements with independent parties. For example, assume with respect to the last example that the subsidiary does not issue an interest to an associate of the beneficiary. Rather, a bank that is independent from the entity and its subsidiary makes an agreement with the associate of the beneficiary that in the event that the beneficiary's interest in the entity is cancelled, the bank will make a payment to the associate. The subsidiary of the entity makes a separate agreement with the bank to indemnify the bank with respect to any payment under this agreement. Under section 60(2)(c), the tax administration may look through the agreement with the bank and the indemnification of the bank and treat the payment by the bank as received by the beneficiary in respect of the cancellation of the interest in the entity. The broad anti-abuse powers in sections 62, 63, and 69 may also apply in these types of circumstances.

288. One remaining area of difficulty with respect to value shifting is the use of entities to shift value between associates. This may occur directly, i.e. where the shift in value is between various interests in a particular entity. In this case, there is no relative change in the value of the entity, only the assets and liabilities held in it. Value shifting between interests in entities of persons who are associates of the entities may also be indirect, i.e. where value is shifted out of a particular entity and into an associate of the entity or vice versa. There are two types of indirect value shift. Firstly, an indirect value shift may be a consequence of a direct value shift such as where an entity holds the interest that value is moved to or from. Alternately, an indirect value shift may, in certain circumstances, result from an entity directly making a payment to or receiving a payment from an associate for inadequate consideration, i.e. a gift. The discussion proceeds to consider these types of direct and indirect value shifting in the context of Sec. 173 and 174.

289. The direct value shifting provisions in section 173 apply where an "event" occurs with respect to an asset or liability held in an entity that causes an increase or decrease in value of another asset or

liability in the entity. "Event" is defined broadly in section 173(8) and essentially involves an acquisition, realisation, or part acquisition or realisation ("variation") of an asset or liability. Section 173 only applies where both assets or liabilities are held by persons who are "associates" of the entity in question, see definition of "associate" in section 107 discussed above at paragraphs 207 to 209. This ensures that the arrangements in question are not made at arm's length. Because of this, invariably the event will give rise to market value consequences for the party holding the asset or liability with respect to which the event occurs, e.g. under section 94 or 95 or, where the asset is an interest in an entity, section 169 or 170. So, for example, the issuing of a share in a company will be treated as acquired for market value or the cancelling of a share in a company will be treated as realised for market value. This treatment is appropriate and so section 173 does not apply to the asset or liability with respect to which the event occurs.

290. Section 173 only applies to the asset or liability held in the entity the value of which is increased or reduced by reason of the event. The problem is that no event has occurred with respect to this asset or liability that directly permits adjustment to its incomings or outgoings such as to ensure that the Sample applies appropriately. It may be that in many cases the general provisions of the Sample may be applied to indirectly provide an appropriate adjustment to this asset or liability, e.g. through the use of sections 60(2), 62, 63, and 69. However, there may be certain circumstances in which such an adjustment is problematic. For example, in the case of a cancellation of an interest in an entity, there is no transfer of the interest to the entity and, further, such an interest is not a "liability" of the entity, see the definition of that term in section 78. In this case there may be no payment made by the person whose interest is cancelled that can be allocated under section 60(2) to the holding of say an increased value interest in the entity. Further, the use of sections 60(2), 62, 63, and 69 require the exercise of power by the tax administration. Section 173 applies automatically. This is appropriate as section 173 encompasses some of the most likely scenarios in which value shifting will occur.

291. The adjustments required to the asset or liability into or from which value is moved are provided by section 173(2) to (7). Effectively, those provisions adjust the incomings or outgoings for the asset or liability in question. Where there is a decrease in value of an asset, the person is treated as realising part of the asset and deriving in respect of the realisation an amount equal to the reduction in value. Any net outgoings for the asset are apportioned to the part of the asset retained and the part treated as realised and so this process may result in recognition of a gain. Any loss that may result is not recognised. This is consistent with the approach in section 94. Where there is a decrease in the market value of a liability, the person's incomings for the liability are increased by a similar amount. This process may also result in the recognition of a gain but not a loss. Where there is an increase in the market value of an asset or liability, the increase is treated as outgoings for the asset or liability.

292. Section 174 deals with indirect value shifting. It applies where an entity holds the asset or liability the incomings or outgoings for which are adjusted under section 173. It also applies to entities making gifts to or receiving gifts from associates. In either case, there is a movement of value between the entity and the associate. The difference between these two cases of indirect value shifting is that in the first case there is no actual payment to or from the entity but there is in the second case. Value is also shifted between an entity and an associate where losses are transferred under section 33(1)(c) or foreign income tax is transferred under section 200(3)(b). In order to ensure consistent treatment, "gift" is defined in section 345 to include such transfers for inadequate consideration.

293. In the second case of indirect value shifting (see above at paragraph 288), if the gift is by an entity to a beneficiary, it will typically be a distribution by the donor entity. If the gift is to an associate of a beneficiary, it may still be a distribution if the tax administration makes use of section 60(2). Section 174(1) alleviates the need for use of section 60(2) and covers decreases in value under section 173. It treats such movements in value from an entity as a distribution to associates of the entity in proportion to their interests in the entity. The reverse situation is where an entity receives a value shift, e.g. is the donee of a gift. As mentioned in the discussion of section 165 above at paragraph 269, the receipt of a gift will not be included in calculating the income of the done under section 17(2)(f) or 18(2)(e) where the donor and the donee are associates. Rather, where the donee is an entity and the donor an associated beneficiary the gift is treated as a contribution to the capital of the entity. Section 174(3) reflects section 174(1) by treating value shifted into an entity by associates, whether under section 173 or as a result of a gift, as a contribution to capital made by associates of the entity in proportion to their interests in the entity. Effectively, this results in an upward adjustment to the outgoings for these interests.

294. Section 174(1) and (3) deal with value shifts to and from an entity by associates of the entity, irrespective of whether they are also beneficiaries of the entity. However, those provisions adjust the treatment of the beneficiaries of the entity who are also associates of the entity. Where the associated beneficiary in an entity (the "primary entity") is itself an entity (the "secondary entity"), the value shift to or from the primary entity should have a similar proportionate effect on the value of interests in the secondary entity. Adjustments similar but proportionate to those made by section 174(1) and (3) are, therefore, appropriate. These adjustments are made by section 174(2) and (4). The provisions are recurrent and so further apply where an associated beneficiary in the secondary entity is itself an entity, and so on. 295. The rules in sections 173 and 174 are complex, difficult to apply, and represent but one approach to value shifting. Many countries may not wish to adopt them but, rather, rely totally on general anti-abuse rules. However, if entities are permitted to transfer tax attributes such as under sections 33(1)(c), 94, and 200(3)(b), value-shifting rules are of added importance. Another manner in which the issue may be addressed, if arbitrarily, is by only permitting losses under the transactional basis income tax to offset gains under that income tax. This does not prevent potential abuse through value shifting, it only focuses it in the transactional basis income tax where most, but not all, value shifting problems occur. This in turn will cause friction between the payments basis and the transactional basis income taxes. This might occur where a person has transactional basis losses. The person may attempt to turn payments basis gains into transactional basis gains in order to use the losses. Whatever approach is taken to value shifting, a tax administration should be aware of the issue and how to appropriately deal with it under the income tax law.

296. Section 175 provides special rules designed to provide the tax administration with relief where domestic source income and losses are allocated to or through non-residents under the entity provisions. As mentioned above at paragraphs 227, 238, 251, and 260, amounts allocated under sections 122 (partnerships), 133 (trusts), 148 (foreign branches), and 157 (controlled foreign companies) may retain their character in the hands of a beneficiary. Where this allocation is of, e.g. domestic source income to a non-resident, the non-resident may be required to include the amount allocated in calculating their assessable income and, therefore, required to file a return of income. This may be administratively inconvenient, particularly where such income is allocated through a number of non-

resident entities. Further, where the non-resident beneficiary's tax rate is lower than the tax rate imposed on the entity from which the income is allocated, the non-resident may seek a refund of excess tax paid. This is also true of resident beneficiaries that are allocated domestic source income through non-resident entities. This scenario may also expose the tax administration to bogus claims for refunds.

297. In order to address this situation, section 175(1) overrides the sourcing rules in section 68 to treat certain domestic source income and losses that are derived or incurred through entities as having a foreign source. Section 175(1) applies in two cases. Firstly, it applies where the domestic source income or loss is derived or incurred by a non- resident person through a resident entity. The second case is where domestic source income is derived through a non-resident entity. The treatment of domestic source income as foreign source income means that it will not be included in calculating assessable income of non-resident beneficiaries. This rule does not apply to the allocation of income of partnerships, which is partly covered by section 122(5), discussed above at paragraph 229, and where the administrative inconvenience appears minimal. Section 175(2) overrides the definition of "foreign income tax" in section 345 to provide that domestic income tax paid with respect to income re-sourced under section 175(1) is treated as foreign income tax. This rule means that such domestic income tax may not be claimed as a tax credit and, therefore, may not be the subject of a refund claim. However, where a resident beneficiary is involved, foreign tax offsets may be claimed with respect to such tax under section 200, see the discussion below at paragraphs 312 to 314. Section 175(3) was discussed above at paragraph 262.

PART IV: SPECIAL INDUSTRIES AND OFFSETS

298. In contrast to Part III (which provides special rules that apply to particular types of persons), Part IV provides special rules that are particular to certain types of activity, without particular reference to the type of person conducting the activity. Division I covers insurance, Division II covers retirement savings, and Division III provides special offsets for persons deriving foreign source income.

Division I: Insurance Business

299. This Division contains special rules applicable to the insurance industry. It begins with section 180, which contains definitions of some central concepts for the Division. In particular, it distinguishes between "general insurance" and "investment insurance". "Investment insurance" is insurance that contains an investment aspect, i.e. where a return on the premium paid is expected. This type of insurance is broader than but includes the classic province of life insurance. "General insurance" is defined to cover other types of insurance. The following sections in Division I proceed to consider the treatment of premiums paid for insurance, the calculation of income from an insurance business, and the treatment of proceeds from insurance. The first and third of these involve the treatment of persons interacting with insurance businesses whereas the second involves the tax treatment of such businesses. The second will be considered before the first and third.

300. Section 182 provides for calculating income from a general insurance business. Premiums received in respect of insurance conducted by the business are included in calculating income from the business. This is offset by a deduction for proceeds paid in respect of such insurance. Otherwise, income from a general insurance business is calculated in the usual manner under Part II. One particular issue with respect to insurance business is the fluctuating profitability of the business. Insurance business is, arguably, subject to greater fluctuations in income and losses than many other forms of business. This issue is generally addressed through the provision for loss carry forward. However, in the case of insurance, this is often viewed as

insufficient. One approach often adopted is to permit insurance businesses to accrue a tax-free reserve, e.g. through a deduction for a claims reserve. This approach is often aligned with the requirements of prudential supervision of the insurance industry.

301. A disadvantage of this approach is that it enables the insurance industry to create a pool of tax -free funds that may be invested to derive a return. No other industry is permitted to save in this manner unless the receipts in question consist of contributions of capital to business. Typically such contributions are made out of taxed funds and often this is not the case with respect to premiums paid for general insurance. In particular, the tax -free reserve approach discriminates against persons providing self- insurance because they are not permitted to create tax -free reserves. Therefore, section 182(3) addresses the volatility of insurance business in a different manner. Instead of permitting the creation of tax free reserves, general insurance businesses may not only carry forward losses but may carry them back for up to five years. The effect is similar to the reserve approach without permitting the investment of tax -free funds. Which approach is taken, if any, to the volatility of insurance business should be determined according to local considerations. The same applies to the length of the carry back period if the carry back approach is adopted.

302. By contrast, the general approach under the Sample is to treat investment insurance in a similar manner as an investment in shares of a company. This is clear from the manner in which income from an investment insurance business is calculated under section 183. As in the case of capital contributions to companies, premiums received in the course of conducting an investment insurance business are not included in calculating income from the business. Similarly, proceeds paid on insurance by such a business are not deductible. Given this treatment, there is no apparent need to make adjustments for any volatility of investment insurance business such as those made with respect to general insurance.

303. Sections 181 and 184 deal with the treatment of an insured with respect to the payment of insurance premiums and the receipt of proceeds from insurance, respectively. Section 181 states that the deductibility of premiums paid for insurance is generally determined under the general deduction provision in section 25, discussed above at paragraphs 70 to 78. A deduction would not be available for premiums paid by an individual for investment insurance of the individual because such premiums would be of a capital nature. Similarly, the general rule under section 184(1) is that the treatment of proceeds received from insurance is determined under section 66, discussed above at paragraph 137, i.e. the treatment depends on the type of event insured against. This is the treatment under the payments basis income tax. 304. The treatment under the transactional basis income tax is split. If the insurance covers a loss with respect to an asset or liability, the insurance is not viewed as an asset separate from the asset or liability, see the definition of "asset" in section 76 and the discussion above at paragraph 155. Rather, premiums paid may be treated as an outgoing for the asset or liability and the proceeds of insurance as an incoming. This will typically be the case with general insurance and is consistent with the approach taken to proceeds from insurance under the payments basis income tax. Where insurance does not cover loss with respect to an asset or liability, the insurance is an asset of itself and the premiums and proceeds may be outgoings and incomings with respect to that asset. This will often be the case with respect to investment insurance.

305. Section 184(2) also requires specific mention. It requires the calculation of any gain from investment insurance, i.e. the difference between premiums paid and proceeds received. This amount is treated in the same manner as a dividend. Therefore, where such gains are received from a resident person, they are subject to

a final withholding tax at the same rate as dividends. Where received from a non-resident person, the gain is fully taxable but a foreign tax offset may be available under section 200 for any foreign income tax paid with respect to the gain. The gain is treated in this way because the domestic country may not be sure if the funds from which the proceeds are paid have been appropriately taxed.

Division II: Retirement Savings

306. This Division follows the general approach in Division I. Retirement savings is singled out for special treatment because of its importance, particularly with an increasing proportion of the population consisting of retirees and the diminishing ability or commitment of governments to appropriately provide for retirees. This is a highly political area and one that is particularly sensitive to local considerations. In the usual manner, the Sample simply provides one example of a possible approach. In many cases this approach will not be appropriate, particularly where there is heavy government involvement in the provision of benefits to retirees. The approach under this Division is standard in providing an incentive to save for retirement. This incentive takes the form of a limited exclusion from income for contributions to an approved retirement fund and exemption for income derived by such a fund but taxation of all funds removed from the fund. Therefore, the incentive is one of deferral only.

307. Section 190 distinguishes between "approved retirement funds" and "unapproved retirement funds". These phrases are defined in section 190(2) as is "retirement fund", which is defined in terms of entities exclusively engaged in accepting and investing retirement contributions in order to provide retirement payments to individuals. All retirement funds are unapproved unless they are approved by the tax administration in accordance with requirements to be prescribed by the regulations. The Sample does not provide an example of these requirements, which are likely to be highly subjective to local considerations. These requirements may include some restrictions requiring protection of funds invested with an approved fund and that retirement benefits are withheld until beneficiaries reach some uniform retirement age.

308. Section 192 provides for the tax treatment of retirement funds. Unapproved retirement funds are essentially treated in the same manner as companies and investment insurance businesses. This means that contributions to an unapproved retirement fund are not taxed to the fund and retirement payments are not deductible. Income of an unapproved retirement fund, calculated under Part II but subject to these rules, is fully taxed to the fund. By contrast, an approved retirement fund is exempt from tax. Section 192(4) removes the benefits of approved retirement fund status where such a fund ceases to be approved. The removal is in the form of income tax calculated under that provision and charged under the fourth head of section 1(1).

309. Sections 191 and 193 deal with contributions to retirement funds and retirement payments, respectively. Under sections 191(1) and 193(1) the general deductibility of these types of payments is determined under section 25. The exception is with respect to retirement payments made by a retirement fund, which are not deductible as mentioned in the last paragraph. Section 193(2) dealing with gains from an unapproved retirement interest is in similar terms to section 184(2) and the above discussion of the latter provision at paragraph 305 is relevant.

310. The treatment of retirement contributions to and retirement payments by an approved retirement fund require further comment. Under section 191(2) an individual may claim a reduction in taxable income for retirement contributions made by the individual to such a fund. The total reduction claimed for a tax year is limited by section 191(3) to a specific amount to be prescribed by the regulations. An absolute amount

limitation is viewed as more appropriate than a percentage of income limitation as high tax rate individuals disproportionately benefit from the latter approach. The level of this limitation must be adjusted to local considerations. Notably, an individual may claim the reduction in respect of retirement contributions made on behalf of a spouse. The limit provided in section 191(3) should be aggregated for spouses in order to facilitate this provision. The intention is that couples are encouraged to save for the retirement of both spouses irrespective of who in the couple derives income. The effective exemption of funds used to contribute to an approved retirement fund and the exemption of the fund is balanced by section 193(3), which provides for the taxation of retirement payments received from an approved retirement fund. Where a pay -out from an approved retirement fund takes the form of a lump sum, some bunching relief may be provided by section 5(2), discussed above at paragraphs 20 and 21.

Division III: Foreign Tax Offsets

311. Section 200 provides a resident person deriving foreign source income with foreign tax offsets for foreign income tax paid by the person with respect to the income. Section 200(5) provides a person with the alternative of simply claiming a deduction for foreign income tax paid. Like personal offsets under section 115 and the medical costs offset under section 116, discussed above at paragraphs 218 to 222, foreign tax offsets directly reduce income tax payable by a person under the first head of section 1(1), see above at paragraph 17. The granting of foreign tax offsets is consistent with the principle of source country entitlement. This principle is typically recognised by countries either exempting foreign source income of residents or providing a foreign tax credit for foreign income tax paid with respect to such income. Which approach is adopted will depend on a number of factors including the contentious issue as to which approach is more efficient and local considerations. In particular, the foreign tax credit method is generally viewed as more complex and so the level of sophistication of the tax administration may be an issue in selection. In the usual manner, the Sample provides but one example of a relatively simple foreign tax credit system. The reasons why the Sample uses the word "offset" instead of "credit" were discussed above at paragraph 17.

312. Section 200(1) entitles "resident persons" to claim foreign tax offsets for "foreign income tax" paid with respect to their "taxable foreign income". "Resident person" is defined in sections 108 to 110 and was discussed above at paragraphs 210 to 212. Importantly, it includes a domestic branch of a non-resident. This means that such branches may claim foreign tax offsets in the same manner as domestic subsidiaries of foreign parents and is consistent with their similar treatment under the Sample. "Foreign income tax" is defined in section 345 and "taxable foreign income" in section 200(7). "Taxable foreign income" is defined by reference to "foreign source income", which is essentially defined in section 68. However, "foreign source income" may have an extended meaning by reason of section 175, discussed above at paragraphs 296 and 297. Similarly, "foreign income tax" may have an extended meaning by reason of section 175.

313. As a result of these definitions, resident beneficiaries will often be able to claim foreign tax offsets with respect to income tax paid by an entity, or treated as paid by an entity. For example, this will be the case with resident's foreign branches by reason of the allocation of foreign income tax paid by such branches to their owners under section 148(4), discussed above at paragraph 251. This is because the beneficiary is treated as having paid the tax, thereby triggering the right to a foreign tax offset under section 200. This is also true in the case of a trust, provided the resident beneficiary is allocated the foreign income in the year in which it is derived under section 133(2) rather than section 133(3), see section 133(4) and (7)

and the discussion above at paragraphs 238 and 239. These provisions can work in tandem to provide a foreign tax offset. For example, foreign income tax paid by a foreign branch of a resident trust will be treated as paid by the trust under section 148(4) and may further be treated as paid by a beneficiary under section 133(7). Section 200(6) ensures that the amount of any offset is included in calculating the person's taxable foreign income, i.e. it ensures gross-up. This provision is required, e.g. where a beneficiary of a trust is entitled to attributable income of the trust net of tax.

314. The effect of the treatment discussed in the last paragraph is to provide underlying foreign tax relief. Foreign income tax is not typically allocated from companies to their shareholders under the Sample. The exception is in the case of controlled foreign companies. The income of a controlled foreign company may be allocated to certain resident shareholders of the company under section 157(1). Further, foreign income tax paid by the company with respect to its income may be treated as paid by shareholders who are associates of the company under section 157(5), see discussion above at paragraph 262. The effect is again to provide underlying foreign tax relief but only with respect to shareholders who are associates of the company and only where the company in question is a controlled foreign company. All non-resident companies that have an associated resident shareholder fall within this category. As discussed above at paragraph 262, this treatment may be extended to distributions of resident companies in limited circumstances as a result of section 175(3).

315. Section 200(2) provides for the manner in which foreign tax offsets are calculated. This is done on a country-by-country basis. As discussed above at paragraph 146, this makes it necessary to specifically identify the foreign country in which income is sourced. The foreign tax offset for income sourced in a particular country is limited to the average rate of domestic income tax payable by the person for the tax year in question. This rate is calculated under section 200(7). The country -by-country limitation is designed to minimise any incentive to invest in low-tax countries in order to use up excess foreign income tax paid to high-tax countries. As with many other issues, this limitation should be adjusted to local considerations.

316. Section 200(3) provides some relief from the restrictive manner in which foreign income tax may be used as a result of section 200(2). Firstly, it permits excess foreign income tax (i.e. excess resulting from the limitation in section 200(2)) to be carried forward for use in future tax years in a similar manner to excess losses under section 33, i.e. subject to a country-by-country limitation. Further, a person may transfer excess foreign income tax to an associate of the person subject to the country-by-country limitation and the requirements of section 200(4). These requirements are essentially the same as those required for the transfer of losses under section 33(3) and the discussion above at paragraphs 93 to 95 is relevant. As mentioned above at paragraph 42, this is the last of the three manners in which tax attributes may be transferred between an entity and an associate under the Sample. The overall treatment of excess foreign income tax is consistent with the treatment of excess losses subject to one exception. The restriction on the set off of investment losses against business income, discussed above at paragraph 92, is not reflected in the treatment of excess foreign income tax. The reasons for this restriction, discussed at paragraphs 35 to 39, do not appear as pertinent in the case of excess foreign income tax.

PART V: TAX PAYMENT PROCEDURE

317. This Part and Part VI are what are conventionally considered the tax administration provisions. These provisions may be structured along a number of logical lines and the one adopted by the Sample is just one example. Part V contains what is referred to as the "Tax Payment Procedure". It is an effort to bring together most all administrative provisions involving the

payment of tax. "Tax" in this sense must be understood in the broad context defined in section 205, which includes not just income tax but also interest, penalties, and certain other payments in the context of recovering tax. By contrast, Part VI is concerned with administration of the Sample by the tax administration authority.

318. Part V is structured under six divisions. The Part follows the common approach in the Sample of beginning with a central concepts division, in this case entitled "General Obligations". Division I sets out general obligations regarding the payment of tax, including the method and timing of payment. The following divisions largely follow the process of paying tax. Division II begins with the earliest point at which income tax may be payable during a tax year, i.e. by withholding from payments. Division III continues with the next point of payment, which is by instalment. Division IV deals with the traditional income tax payment procedure, i.e. on assessment. Division V continues by considering the consequences of non-compliance with the income tax payment procedure. In particular, it deals with interest and penalties, offences, and various methods of recovery of tax. Importantly, many of the provisions in this Division give rise to a tax, though not income tax, liability. Finally, Division VI deals with remission and refund of tax.

Division I: General Obligations

319. Section 205 is the central provision in the Sample regarding payment of tax. It begins by defining "tax". As mentioned above at paragraph 317, this includes not only income tax but other amounts considered tax under the Sample such as interest, penalties, and certain other amounts. This approach is important because it ensures that the interest, penalty, and recovery provisions all apply to these amounts. Section 205(2) proceeds to identify the methods by which tax is payable, including by withholding, by instalment, on assessment, and on notification. Section 205(3) requires tax to be paid in the form and at the place prescribed by the tax administration. 320.

Section 206 deals with timing the payment of tax. The Sample makes a distinction between tax that is due and tax that is due and payable. Tax is generally due when all the events needed to give rise to a liability to pay the tax have occurred. When tax is due it is a debt owed to the government. Tax may be payable some time after it is due. The amount of time given for payment should be adjusted to local conventions. When tax is payable, the tax administration may use the recovery procedure in Division V to recover the tax. The distinction between tax due and tax due and payable is used in some of the recovery provisions where, e.g. the tax administration may secure its position with respect to tax that is due but not yet payable. Of course, this position may be secured through the granting of a more general power to the tax administration. This approach is avoided because in certain situations it may be open to abuse by the tax administration. Whether a distinction between tax due and tax due and payable is adopted is yet another issue that must be decided after accounting for local considerations. Another useful consequence of clearly identifying all payments considered tax is that one provision can be used permitting the tax administration to extend the time for payment. This permission is provided by section 206(4).

321. A general obligation imposed on persons that is a consequence of the requirement to pay tax is the requirement to maintain documentation. Documentation is required in order that the tax base may be calculated and in order that information provided to the tax administration may be audited. The documents that a person must maintain under section 207 are consistent with these purposes. The length of time for which documents must be maintained and the language in which they must be kept are issues for local consideration. Often the length of time coincides with that provided by a general statute of limitations.

Division II: Income Tax Payable by Withholding

322. This Division requires withholding of tax from certain payments that have a domestic source. The "source" of a payment is determined in accordance with section 68, discussed above at paragraphs 140 to 146. The obligation to withhold is generally only imposed on resident payers. However, under section 213 a non-resident person may elect to withhold under this Division. A non-resident person may make this election in order to make the further election under section 222(3) that certain payments received by the person are not final withholding payments. This further election will mean that non-resident persons can claim deductions in order to reduce their tax liability with respect to what would otherwise be final withholding payments. This was discussed above at paragraph 85. The distinction between "resident" and "non-resident" persons was discussed above at paragraphs 210 to 212. The treatment of domestic branches of non-residents as resident persons is again important in this regard as such branches will be required to withhold under this Division.

323. The obligation to withhold does not apply to all types of payments. It applies comprehensively to payments for services. Payments by an employer to be included in calculating the income of an employee are subject to withholding under section 210. Importantly, all forms of payments of this type are covered, including in-kind payments. The Sample takes the approach that if an employer, or any other person liable to withhold tax under the Division, makes an in-kind payment, it is up to the payer to arrange with the payee how the tax is to be paid and to make that payment. The rate of tax to be withheld under section 210 is to be prescribed by the regulations. These rates are often outlined in tables and, in the context of resident employees, are adjusted for marginal tax rates and personal offsets. These rates typically permit an individual's main employer to apply the standard tax rate schedule and offsets to the individual's income from the employment.

324. Other employers and payers for services will not easily be able to identify an appropriate rate for withholding. Therefore, an arbitrary rate must be used in these cases. In the case of secondary employers, this is often equal to the highest marginal rate. The reason for this is that employees are not subject to the instalment system and there is a potential for tax deferral if tax is not withheld at a relatively high rate. By contrast, other payees for services, e.g. independent contractors, are subject to the instalment system. They will be able to credit any tax withheld during a quarter against their quarterly tax instalment. In this case the potential for deferral is substantially less and a lower rate may be viewed as appropriate. This is the approach adopted in the Sample where the rate applied to payments of service fees to residents is the same as the final withholding rate for non-resident payees, see section 212(1). As mentioned above at paragraphs 30 and 31, this is also the rate for non-resident employees with respect to their taxable income and so is the rate at which resident employers are required to withhold tax from payments to such employees.

325. Withholding is also required from investment returns as outlined in section 211. In the case of these types of payments, it is expected that a substantial amount of the payment will often remain subject to taxation on assessment even after deductions are claimed, although this will not always be the case. Further, where such payments have a domestic source and are paid to non- residents they are likely to represent wealth created or value added domestically and, on that basis, justify source based taxation, see the discussion above at paragraphs 141 and 142. For these reasons, investment returns are subject to withholding tax under the Sample. The rate selected is uniform and the reasons for this were discussed above at paragraphs 30 and 81. Persons for whom the tax withheld is not a final withholding tax, will credit tax

withheld during a quarter against their quarterly tax instalment.

326. Other payments are not subject to withholding tax. In this case, the percentage of the payment that represents value added, if any, will be unclear. Many countries do impose a general withholding tax at a low rate on all contract payments. However, inevitably there is a dispute as to the rate of this withholding tax and how it applies in the context of non-resident payees. The approach taken in the Sample is to give the tax administration power to require withholding from contract payments to non-residents in specific cases, see section 212(2). For example, this power may be used with respect to insurance premiums paid by residents to non-resident insurers. Otherwise, the Sample relies on the tax instalment system with respect to contract payments. Particularly in a domestic context, it is felt that tax administration resources are better allocated to robust enforcement of a tax instalment system, that can be seen to be fair, rather than an arbitrary withholding tax that is difficult to enforce and justify. Further, greater reliance on the tax instalment system, which must be enforced in any case, simplifies withholding requirements for payers.

327. Another manner in which the withholding system is simplified is by providing uniform rates of withholding. The more rates applied to different types of payments and payees the more difficult it is for the payer who must make the distinctions in order to correctly withhold. The obvious example is where a payer must determine the residence of a payee in order to determine the appropriate rate of withholding. Another method of simplifying the withholding tax system is to exclude from its ambit persons acting in a private capacity. Therefore, individuals making payments outside the conduct of a business are not required to withhold tax. This is another area in which resources may be better allocated to enforcing the instalment system than to enforcing the withholding system on persons who may have difficulty understanding and complying with that system.

328. Section 220 moves to the administration side of withholding. Again, it is emphasised that the Sample provides but one approach to withholding. The withholding procedure is another issue that should be adjusted to local considerations, particularly with respect to issues such as the timing of reporting requirements. Section 220 requires a withholding agent, i.e. a person under an obligation to withhold under Division II, to file monthly statements with the tax administration specifying details of withholding by the agent. Importantly, tax withheld is required to be paid with the filing of the statement. If a withholding agent fails to withhold tax, they are required to pay to the tax administration the amount that they should have withheld. The withholding agent is entitled to recover any such payment from the withholdee, i.e. the person receiving the payment subject to withholding. The only circumstance in which the withholdee is liable for payment of an amount that should have been withheld is where the withholding agent both fails to withhold and does not make the payment to the tax administration as required.

329. A withholding agent is required to give the withholdee a certificate regarding amounts withheld from payments to the withholdee, see section 221. The withholdee is required to attach any such certificates received to the withholdee's return of income for the relevant tax year, see section 235(2)(c)(i). In the case of employees, these certificates are to be provided yearly, and in other cases monthly.

330. Section 222 is an important provision that identifies final withholding payments. The gross amount of these payments constitutes the tax base for income tax charged under the third head of section 1(1). As mentioned above at paragraphs 28 and 29, all dividends distributed by resident companies are final withholding payments. Further as mentioned above at paragraphs 305 and 309, gains from

investment insurance and unapproved retirement interests are treated similarly. Further, all payments to non- residents that are subject to withholding are prima facie final withholding payments. Again, as domestic branches of non-residents are treated as resident persons, many payments to such a branch that are subject to withholding will not be final withholding payments. Further as mentioned above at paragraph 322, non-residents that make an election under section 213 to act as a withholding agent and do so may further elect that payments subject to withholding, other than dividends and similar payments, are not final withholding payments. Section 222 also defines "investment final withholding payments". This definition is particularly relevant to the limitation on deduction of certain final withholding payments under section 27, discussed above at paragraphs 80 to 86.

331. In contrast to section 222, section 223 deals with withholding tax that is not a final tax. Section 222 provides a tax credit to the withholdee for tax withheld. This tax will reduce any liability to pay tax by instalments as well as be taken into account in determining the withholdee's overall income tax liability for a tax year on assessment, see discussion below at paragraphs 332 and 333. Section 223 proceeds to ensure that any tax withheld is included in calculating the withholdee's income, i.e. gross-up. Finally, as mentioned above at paragraphs 228 and 239, the allocation rules under the partnership and trust regimes may treat tax paid by a partnership or trust "as though the tax were withheld from a payment" to a partner or beneficiary, i.e. under sections 122(4) and 133(7). In this case the partner or beneficiary will be entitled to a tax credit under section 223.

Division III: Income Tax Payable by Instalment

332. This Division provides for the payment of income tax by a person by quarterly instalments during a tax year based on an estimate of the person's taxable income for the year. It co-ordinates with the payment of income tax by withholding under Division II, see above at paragraphs 324 to 327 for the interaction with the withholding tax system. Payment of tax by instalments is fundamentally different from payment of tax by withholding. Withholding requires a person's tax to be paid by a third party, whereas under an instalment system the person pays their own tax. A similarity between these two systems is that the tax paid under them is generally adjusted at the end of the tax period, i.e. they are preliminary and typically do not involve a final payment of tax.

333. The obligation to pay income tax by instalments under section 230 does not apply to an individual who only has employment income for a tax year. Section 230(2) sets out the timing of instalment payments. This timing is based on three monthly intervals. Importantly and for the reasons mentioned above at paragraph 100, this timing varies from person to person depending on their tax year. Section 230(3) provides a basic formula for calculating the amount of an instalment. It is a progressive formula that adjusts instalments during the year, e.g. for changes in circumstances, in an attempt to ensure that the amount of tax paid by instalment by the end of a tax year is reasonably sufficient to meet the person's full tax liability for the year. Therefore, the amount of a particular instalment is adjusted for tax paid by prior instalment, tax withheld from payments that are not final withholding payments, and, in the case of individuals, any potential claim for a medical costs offset under section 116. Section 230(4) provides that instalments of an amount below a small threshold may be disregarded. This threshold must be adjusted to suit local considerations. As with withholding tax that is not final, income tax paid by instalment is credited against the instalment payer's final tax liability.

334. Section 231 provides for the estimation of tax payable by a person that is used in section 230 in calculating the person's liability to pay tax by instalments. The

Sample requires a person to estimate by the time of the first instalment for a tax year the amount of tax to be payable by the person for the whole year. Many countries permit persons to use their tax liability for the previous tax year for this purpose. This approach often proves substantially inaccurate. The Sample primarily requires an actual estimate, with the potential to change an estimate during the year with consequent adjustments to the calculation of future instalments under the formula in section 230(3). The potential for tax deferral through low estimates is addressed through an interest charge under section 251. The tax administration is provided with a power to exempt a person or class of persons from providing an estimate, e.g. small taxpayers. In this case the tax administration will make the estimate for the person, which may be based on taxable income of the previous tax year. The tax administration is also given power to override an actual estimate of a person.

Division IV: Income Tax Payable on Assessment

335. As mentioned above at paragraph 332, income tax payable by withholding and instalment is only a preliminary tax liability (other than where withholding is final). This Division provides for an overall assessment of a person's income tax liability under the first head of section 1(1) for a tax year with an appropriate accounting for any tax paid by withholding or instalment. In the usual manner, it provides for the filing of a return of income with the tax administration and an assessment of that return. However, in most cases this is a deemed assessment that is only relevant for purposes of triggering the availability of administrative review. That is, the Sample generally adopts self- assessment, with appropriate safeguards.

336. Section 235 provides for the filing of returns of income. This is a relatively straightforward provision. The time for filing, i.e. 3 months after the end of a tax year, is only an example. As discussed above at paragraph 100, this time runs from the end of the person's own tax year and not from the end of any standard tax year. This means that the tax administration will not receive all returns of income at the same time. There is no formal requirement that a return of income be prepared with any professional assistance. However, where there is such assistance, the professional must sign the return and if in d is agreement with the return must provide a statement of reasons, to be attached to the return. Professionals who assist in preparing a return that is inaccurate may be liable for penalties and guilty of an offence, e.g. see sections 254 and 265. Section 235(5) gives the tax administration power to require a person to file an early return in particular circumstances. This provision must be read in light of sections 281 and 321. In particular, under section 321 the tax administration may require any person to create a document. This would enable the tax administration to require a person to prepare a return of income on behalf of another person, e.g. require an executor to prepare a return on behalf of a deceased individual.

337. Section 235 potentially requires all persons to file a return of income for a tax year, e.g. it does not include any jurisdictional limitations. Section 236 sets out the circumstances in which a return of income is not required. A person with no tax payable for a tax year under the first two heads of income tax in section 1(1) is not required to file a return of income. This will exclude from the obligation to file most non-residents as well as persons who only derive exempt income or income subject to final withholding tax and those whose tax payable is reduced to nil, e.g. through claiming personal offsets, medical costs offset, or foreign tax offsets. Section 236 also excludes an individual who only has income from one employment. As mentioned above at paragraph 18, the effect of section 1(4) is to turn wage withholding tax into a final withholding tax, although it is not formally treated as such by the Sample. Section 236(b) reflects this by not

requiring individuals subject to this treatment to file a return of income.

338. Section 237 is a standard provision enabling the tax administration to extend the time for filing a return of income. The length of extension is an issue for local consideration. An example of 60 days is provided by section 237.

339. Section 240 provides for self-assessment. The filing of a return of income and even the non-filing of a return of income are treated as an assessment on the due date for the filing of the return. This deeming provision is offset by the power of the tax administration to raise assessments under sections 241 and 242. Where the tax administration makes use of these powers to raise an assessment, the person in question must be served with a notice of assessment under section 243.

340. Sec. 241 concerns jeopardy assessments, i.e. assessments raised in circumstances where there is concern for securing that payment of tax will be made. This provision works in tandem with Sec. 235(5) under which the tax administration may require a person to file an early return of income. Importantly, under Sec. 206(3)(c) the time at which tax must be paid by reason of Sec. 241 is basically at the discretion of the tax administration. This is provided the relevant notice of assessment or notice requiring a return of income is served on the person in question. In principle but subject to general restrictions on abuse of administrative powers, it is possible for the tax administration to make a jeopardy assessment and require immediate payment of the tax assessed. If immediate payment is not forthcoming the tax administration could immediately proceed to collect the amount of tax assessed under Division V. A jeopardy assessment may be final, in that it replaces the assessment that would otherwise take place at the end of a tax year, or preliminary, in which case it will be adjusted when an end of year return of income is filed.

341. Section 242 provides the tax administration with a broad power to amend assessments. This is a necessary balance to self-assessment but is common even in cases where full tax administration assessment is used. This power extends to self- assessments, jeopardy assessments, as well as assessments amended under a previous use of section 242. The tax administration may amend an assessment in a manner "consistent with the intention" of the Sample and using its "best judgement". These are the only substantive restrictions on exercise of the power. There is also a time limit restriction, which is primarily an encouragement for the tax administration to perform its duties in a timely fashion. Section 242(2) adopts a general time limit of three years but this should be adjusted to local considerations. Section 242(3) provides an exception in the case of fraud, in which case there is no time limit. Often this exception is not adopted on grounds of administrative certainty and in order to focus administrative resources on current tax liabilities. There is the usual exclusion of amendment with respect to issues that have been decided by a court.

Division V: Non-Compliance

342. This relatively lengthy Division deals with the consequences of non-compliance with the tax payment procedure and the Sample in general. It is structured under five subdivisions. The first two deal with the imposition of sanctions designed to discourage non-compliance. These subdivisions are separated in order to emphasis the distinction between the civil consequences of non-compliance and the criminal consequences. Because non-compliance may give rise to both types of consequence, Subdivisions A and B follow the same format. Subdivision A provides the civil consequences. In principle, it is not concerned with punishment of a non-compliant person but, rather, seeks to remove any financial incentive for non-compliance. In cases that lack intent, this often means a penalty in the nature of interest. However, where there is intent, it is clear that the chance of not being

discovered is an added financial benefit. This justifies a substantially increased penalty in cases of intentional non-compliance.

343. The interest and penalties imposed by Subdivision A are imposed by the tax administration. This is appropriate and in some ways is similar to penalties imposed under other civil relationships, e.g. penalties under a contract. By contrast, Subdivision B deals with the criminal consequences of non-compliance. It deals with punishing persons who do not comply with the tax law. This punishment should be meted out in a similar fashion to non-compliance with other laws and is clearly not an appropriate matter to be dealt with by the tax administration. It is more appropriately administered by a government agency such as the Public Prosecutor or the Ministry of Law and Justice, with the penalty being imposed by a court having jurisdiction over criminal cases.

344. Subdivisions C and D provide the tax administration with broad powers for the collection of tax, and this includes both income tax as well as interest and penalties but not fines for offences under Subdivision B. Subdivisions C and D provide for recovery from the person liable for tax as well as, in certain circumstances, third parties, respectively. Subdivision E deals with a number of provisions that have common application with respect to the other Subdivisions.

Subdivision A: Interest and Penalties

345. The approach in this Subdivision is to adopt a minimal number of provisions under which interest and penalties may be imposed. It begins by focusing on the main obligations of a person liable to income tax and proceeds to cover aggravated non- compliance where intent is an element. As mentioned at paragraph 342, the intention of the interest and penalty provisions is to remove any financial incentive for non- compliance. In the case of the non-payment of tax, this goal is achieved by imposing interest at a market rate. In other cases of non-compliance, an issue is the manner in which the penalty is calculated. In order to remove the financial incentive for non-compliance, it seems that the amount of a penalty should vary depending on the amount of tax potentially at risk. In the case of a failure to file a statement or maintain records, the total amount of inclusions in calculating income multiplied by the highest marginal tax rate is used. In cases smacking with intention to reduce tax, it seems appropriate to calculate penalties by reference to the amount of tax that might have been reduced. In some cases it may be difficult to calculate this amount. Often a more arbitrary approach is adopted. However, any such approach should attempt to raise the level of penalties by reference to the amount of tax at risk.

346. Section 250 covers the failure of persons to maintain proper documentation under section 207 or to file a statement with respect to withholding, an estimate of tax payable for instalment purposes, or a return of income. A failure with respect to any of these matters may result in delay in the payment of tax. The penalty is calculated as the statutory interest rate applied to the tax at risk. As mentioned above at paragraph 84, this is the general interest rate applied throughout the Sample.

347. Section 251 provides for the imposition of interest where a person files an inaccurate estimate of tax payable for instalment purposes. The need to prevent tax deferral through underestimation of tax payable by instalments was discussed above at paragraph 334. An instalment payer is given a ten percent margin for error before interest is imposed. The interest is imposed at the statutory rate and only until such time as a return of income is to be filed. After the time for filing a return of income, section 252 takes over. It is the general provision that imposes interest for a failure to pay tax. Again the rate is the statutory rate. Section 252 applies to all "tax" as broadly defined in section 205, see the discussion above at paragraph 319. Further, interest is imposed where tax is not paid by the time it is "due and

payable". This time is determined under section 206, discussed above at paragraph 320.

348. Section 253 imposes heavier penalties where a person without reasonable excuse, knowingly, or recklessly makes a misleading statement to the tax administration. This provision also applies to omissions of a similar nature. Section 254 applies to persons who knowingly or recklessly aid or abet another person to commit an offense. As mentioned above at paragraph 336, this section may have particular relevance to tax professionals providing other persons with assistance in preparing returns of income and other documentation.

349. Section 255 deals with the assessment of interest and penalties. This assessment is conducted by the tax administration. Interest and penalties under Subdivision A are not due and payable until the tax administration serves the offender with a notice of assessment, see section 206(3)(e).

Subdivision B: Offences

350. As mentioned at paragraph 342, this Subdivision broadly follows the format of Subdivision A. However, in this case the fines and imprisonment that may be imposed are not as directly influenced by the amount of tax at risk. Nevertheless, the examples of fines and imprisonment under this Subdivision do generally represent a two tiered structure that varies depending on the amount of tax at risk. The appropriate level of fine and imprisonment is subjective to local considerations and must be adjusted from the examples provided. It is important to emphasis that a court of competent jurisdiction and not the tax administration imposes the fines and imprisonment under this Subdivision. Indeed, the tax administration does not even have power to commence criminal proceedings for an offence. The Public Prosecutor or other relevant government agency must commence such proceedings but the tax administration is given specific power in section 291 to lay information regarding an offence before the Public Prosecutor. Fines are not within the definition of "tax" in section 205 and so the tax administration has no rights with respect to the collection and recovery of fines. The relevant court will have its own recovery mechanisms.

351. Section 260 is the general offence provision. It applies to all breaches of the Sample. The following provisions apply to more specific breaches. The offences in sections 261, 262, and 265 directly reflect the application of interest and penalties under sections 252, 253, and 254, respectively. There is an additional offence in section 263 of impeding the tax administration, which may be particularly relevant where the tax administration is exercising audit powers under sections 320 and 321. Finally, section 264 provides particularly heavy fines and imprisonment for certain offences by tax officers and persons impersonating tax officers. This provision seeks to provide a clear message to tax officers that corruption at any level is not acceptable.

Subdivision C: Recovery of Tax from Tax Debtor

352. This Subdivision deals with the manner in which the tax administration may seek to recover outstanding tax directly from the person who owes the tax (the "tax debtor"). In the usual manner, it begins with a general approach and then proceeds to consider some specific options. The general approach is to sue the tax debtor. This is provided for in section 270. There will often be no need to resort to use of section 270. This is because the recovery powers granted to the tax administration under the remainder of the Subdivision and Subdivision D broadly correspond to those that courts exercise and the tax administration does not need a court order to exercise them. That is, if the tax administration cannot recover the tax under the other provisions, it is unlikely that a court would be able to recover the tax through its enforcement mechanisms. Nevertheless, in some circumstances the tax administration may wish to obtain a court order for payment of tax. For

example, such an order may be required in order to bankrupt a person. This might be an appropriate action for the tax administration to take in order to assist in protecting persons that deal with insolvents.

353. Sections 271, 272, and 273 are related. The intention of these provisions is to provide the tax administration with a quick but appropriate mechanism for creating a security interest in assets of a tax debtor and the ability to realise that security through a power of sale. Sections 271 and 272 deal with situations giving rise to a security interest in favour of the tax administration and section 273 with the power of sale. Section 271 essentially provides that when a withholding agent withholds tax from a payment under Division II the tax is held in trust for the government. This ensures that the tax withheld is not generally available to the creditors of the withholding agent. If the withholding agent should not have made the payment to the withholdee, e.g. due to insolvency, the creditors must seek claw-back of the payment, e.g. under the insolvency law. Where claw-back is granted, the tax administration's claim to withheld tax will fail.

354. Section 272 enables the tax administration to create a charge over the assets of a tax debtor. Many countries seek to provide the tax administration with automatic priority over the assets of a tax debtor. This appears unfair to other creditors of a tax debtor. All creditors of a tax debtor, including the tax administration, should be treated in an even - handed manner. Typically creditors may obtain a security interest in a debtor's property through execution of a court order. As mentioned at paragraph 352, the approach under the Sample is to essentially treat a tax assessment under the Sample in the same manner as a court order for enforcement purposes. Therefore, it is consistent that the tax administration be able to create a security interest without obtaining a court order. However, that interest in assets should be subject to prior interests obtained by third parties and the tax administration should make it clear that they have a security interest in order that other persons dealing with a tax debtor become aware of the situation.

355. To this end, in order to create a charge over a tax debtor's assets, the tax administration must serve a notice on the tax debtor. As noted above at paragraph 320, such a notice may be served where tax is due and payable by a person but also where it is only due if recovery of the tax when it becomes due and payable is at risk. Importantly, in order to protect other persons dealing with the tax debtor, section 272(4) delays the effect of a charge created by notice of the tax administration until the happening of specific events, which vary depending on the type of asset in question. In the case of land or buildings, the tax administration must apply to register the charge on the title of the property. The precise mechanics of this provision will vary from country to country. With respect to other tangible assets, the tax administration must take possession of the assets in accordance with section 273, which deals with the tax administration's power of sale. With respect to intangible assets, it is more difficult to provide the public with notice of the interest and in this case the Sample permits the charge to arise on the giving of the initial notice. Where a particular country has public registers in addition to those applying to land and buildings, e.g. with respect to company charges, it may be appropriate to require the tax administration to apply for registration before a charge becomes effective.

356. Section 273 requires the tax administration to notify the tax debtor before selling assets of the tax debtor that are charged in favour of the tax administration under section 271 or 272. This notice is in addition to but may be incorporated with a notice under section 272. Once such a notice is served with respect to tangible assets, the tax administration can take possession of the assets and may request the assistance of the police for this purpose. After taking possession the tax administration may sell

or otherwise deal with the assets after waiting a set period of time, which varies depending on the type of tangible asset in question. The same applies to intangible assets without the requirement that the tax administration take possession of the assets. Section 273 also deals with the manner in which proceeds from the sale of charged assets are to be applied.

357. Section 274 provides the tax administration with power to prevent a tax debtor from leaving the country for a short period of time. This may give the tax administration time to ascertain any assets that the tax debtor has and take action with respect to them. Further, the tax administration may use this time to report the tax debtor to the Public Prosecutor in order that action can be taken with respect to any offences that may have been committed by the tax debtor.

Subdivision D: Third Party Liability

358. This Subdivision sets out the circumstances in which one person may effectively be liable to pay tax on behalf of another person. It begins in section 280 by imposing a broad responsibility on persons involved in the management of entities for offences committed by their entities. These persons are referred to as "officers", a term defined in section 280(5). All persons who are officers of an entity when the entity commits an offence are treated as having committed the same offence. Further, where an entity fails to pay tax, every current officer of the entity or person who was such an officer within the previous six months is liable to pay the outstanding tax. The potential harshness of these rules is ameliorated by section 280(3), which provides officers with a defence. The defence is consistent with generally accepted levels of care, diligence, and skill that are expected of officers of entities. The formulation of this defence may need to be varied to reflect the local formulation of duties of officers of entities.

359. Section 281 potentially makes receivers liable for tax of the person whose assets they hold (the "tax debtor"). "Receivers" is defined broadly in section 281(5) and covers many persons who would fall within the definition of "trustee" in section 106, discussed above at paragraph 206. Section 281 is triggered by notification by the tax administration served on the receiver. In this case, the receiver must put aside the amount of tax to be paid by the tax debtor, as set out in the notice, from assets in or coming into the receiver's possession. A failure results in personal liability for the receiver.

360. Section 282 essentially grants the tax administration a power of garnishee. The tax administration may serve a notice on certain persons that are to pay amounts to a tax debtor requiring the amount to be paid to the tax administration instead. A classic use of this power involves requiring an employer to make tax payments on behalf of an employee or a bank to make tax payments on behalf of a depositor.

361. Section 283 adopts a similar approach with respect to agents of non-resident tax debtors. In this case there is no requirement that a payment to the non-resident be imminent or that the person constitute a formal agent of the non-resident. It is enough if the person is in possession of an asset of the non-resident. This power will most often be used with respect to resident agents but may have broader application. Section 283(3) contains an even stricter rule where the non-resident tax debtor is a partner of a resident partnership. In this case, the partnership and any resident partner may be made liable for tax payable by the non-resident partner irrespective of whether the partnership or resident partner holds assets of or owes money to the non-resident partner. However, the rule only applies with respect to a tax liability of the non-resident partner arising with respect to income of the partnership. This approach is consistent with treating tax liabilities with respect to partnership income as, in substance (though not in form), a partnership liability. Partners are typically jointly and severally liable for partnership liabilities.

Subdivision E: Proceedings Under Subdivisions B, C, and D

362. This Subdivision contains a number of provisions of general application to offences and the recovery procedure. The first provision is particularly targeted at relieving courts from potentially being swamped with prosecutions for tax offences. It provides the tax administration with power to compound an offence under the Sample. As mentioned above at paragraph 343, the general approach is that the tax administration should not be involved in meting out punishment for criminal offences. Section 290 is an exception to that approach that is based on administrative convenience. Under this provision the tax administration can prevent the prosecution of a person for an offence under the Sample. In order to use the power, the offender must sign a confession in writing and pay a fine. The tax administration has no power to impose a prison sentence. Further, because the tax administration is acting in a judicial role, it must use the powers of a court to enforce any fine and not its own enforcement powers under the Sample. Due to the obvious conflict, the power to compound offences does not extend to offences under section 264, which will typically be committed by tax officers.

363. The importance of the tax administration laying information before the Public Prosecutor under section 291 was discussed above at paragraph 350. Section 292 is a standard venue provision. By contrast, section 293 requires some further explanation. Section 293(2) enables the tax administration to issue a certificate specifying the amount of tax due or due and payable by a person. It requires judicial notice of such a certificate and so saves the tax administration from having to prove tax payable by regular judicial methods.

Division VI: Remission and Refund

364. The final division of Part V deals with forgiveness of a tax liability and refunds where a person has paid tax in excess of their liability. Section 300 grants the relevant minister of the government the power to remit tax. This power may only be exercised on certification by the tax administration that tax cannot be effectively collected. This secondary requirement is a standard anti-abuse mechanism. By contrast, the tax administration is given a broader power to remit penalties. This recognises that in some circumstances full adherence to the penalty regime may work unfairly.

365. Section 301 sets out the refund of tax mechanism. A refund is only available where the tax administration is satisfied that tax has been overpaid. The tax administration may exercise this power irrespective of an application by the person concerned. An application procedure is nevertheless provided in section 301(3), primarily in order to enable the administrative review provisions to operate with respect to decisions made by the tax administration on such an application. Section 301(5) requires the tax administration to pay interest on any tax refunded. This provision balances interest payable by persons who do not pay their tax on time, see discussion above at paragraph

347. The rate is the same in both instances. In practice, the interest rate payable by the tax administration is often less than that payable by taxpayers. This is an issue for local consideration.

PART VI: ADMINISTRATI ON

366. This Part is concerned with the tax administration authority, its general powers, and administrative review of its decisions. It is structured under four divisions. Division I concerns the basic structure of the tax administration. Division II concerns official documentation under the Sample, which is generally issued or prescribed by the tax administration. Division III contains the tax administration's information collection powers. Finally, Division IV deals with review of decisions of the tax administration.

Division I: Officers of the Income Tax Service

367. The Sample adopts the approach of conferring powers on the head officer of the tax administration. It is then necessary to deal with delegation of these powers to other tax officers. An alternate approach, often adopted, is to confer powers generally on the tax administration. In this case, it is necessary to limit the use of some powers to only tax officers of a certain rank. Sometimes the issue of delegation is left to the internal procedure of the tax administration. For reasons of certainty, particularly for persons dealing with tax officers using powers under the income tax law, it is preferable that at least some broad demarcation of powers is made in the income tax law. Section 305 provides but one example of such a demarcation and this issue must be adjusted to local considerations. Some countries set up the tax administration under a separate law with relative independence from the relevant ministry of the government, e.g. through a revenue board law. While this approach may have advantages, it is not adopted in the Sample.

Division II: Official Documentation

368. Section 310 makes provision for amendment of the Sample by double tax treaty. In jurisdictions where treaty law overrides domestic law, this provision may not be necessary. The section makes it clear that the tax administration may assist a foreign tax administration in collecting their income tax where this is in accordance with a double tax treaty. The tax administration may use its recovery powers to collect foreign income tax in the same manner as it collects domestic income tax, see the definition of "tax" in section 205(1)(c). Section 310 provides that a double tax treaty does not override certain anti-abuse rules in the Sample. This includes the anti-treaty shopping or limitation of benefits provision in section 310(4) and (5). Depending on the status of double tax treaties under domestic law, for some countries such a limitation on the application of treaties may have no effect. This is another area where the provision must be adjusted to local considerations.

369. Section 311 provides a power to make regulations with respect to the application of the Sample. The power is broad and may be exercised with respect to virtually any issue under the Sample. Typically however, regulations may only seek to implement an income tax law. They cannot, of themselves, make law or change the income tax law. This is why the Sample makes specific provision for making regulations with respect to particular matters that might otherwise breach this boundary.

370. Section 312 enables the tax administration to issue practice notes. These notes will set out the manner in which the tax administration intends to administer the Sample, particularly with respect to interpretation matters. In order to provide certainty to persons subject to the Sample, the tax administration is estopped from applying it in a manner contrary to that set out in a current practice note, i.e. practice notes are binding on the tax administration.

371. Section 313 enables the tax administration to issue a private ruling to a particular person with respect to tax issues arising for the person under the Sample. In the context of self-assessment, it is important that persons are able to obtain the tax administration's position on contentious issues in order to avoid the potential imposition of interest and penalties. Where a person makes full disclosure and matters proceed as disclosed, the tax administration is bound by a private ruling.

372. The remaining provisions of the Division contain some relatively self-explanatory provisions regarding documentation. Section 314 grants the tax administration a general power to specify the form of documentation under the Sample. Section 315 deals with the issuing of taxpayer identification numbers. The use of common numbers and the sharing of information across government departments and even tax offices,

particularly by way of computer, is an important aspect of tax administration and collection. Section 316 deals with service of documents under the Sample. It makes provision for service of documents electronically, where the person to be served has previously agreed to this method, and in the traditional manner. Section 317 is used to determine whether a document issued under the Sample is defective and provides a method of rectification in certain circumstances.

Division III: Audit and Information Collection

373. This Division grants the tax administration two broad powers for the collection of information and then seeks to impose restrictions on the use of information collected. Section 320 is very broad in granting the tax administration full and free access to premises, places, documents, and assets. This is the primary power to be used in a tax audit. The tax administration is also granted some residual powers that supplement this general access power. Tax officers must be specifically authorised to use this power of access and the occupier or other relevant person may request proof of this authorisation. Such an occupier or person may be required to provide reasonable assistance to a tax officer exercising powers under section 320. Notably, this provision does not contain any jurisdictional limitation. This issue is left to the tax administration, which should be conscious in exercising this power of potentially breaching laws of other countries. The power does not permit the tax administration to forcibly enter premises. If access is denied to particular premises, the person denying access is guilty of an offence, e.g. under section 263, and the tax administration should seek the assistance of the police.

374. By contrast, section 321 is targeted at persons providing information rather than tax officers finding physical or electronic information. The tax administration may require a person to produce or create a specific document. There is also a direct interrogatory power whereby a person may be required to attend a particular place and be examined on oath by tax officers. As with section 320, the tax administration cannot use the power in section 321 forcibly. A non-compliant person will be guilty of an offence and remedy should be had in the criminal law. Both sections 320 and 321 purport to override the law of privilege. This means, e.g. that the tax administration may obtain access to documents in the possession of lawyers regarding their clients. The same is true of documents that are in the possession of a person and that tend to incriminate the person. Whether such an override is possible or desirable must be determined according to local considerations.

375. Section 322 is intended to balance the broad powers granted to the tax administration under sections 320 and 321. Subject to limited exceptions, tax officers may not divulge information collected in performing their duties under the Sample to any person, including a court. The main exceptions are where the divulgence is required by the officer in order to perform the officer's functions under the Sample, e.g. divulgence to other tax officers, or as a result of administrative review or other proceedings with respect to a matter under the Sample. The same secrecy requirements are imposed on a person receiving information from a tax officer under an exception to the tax officer's secrecy requirement. Breach of a secrecy requirement is viewed as a serious offence and is subject to a stiff penalty and possible imprisonment under section 264(2).

Division IV: Administrative Review

376. This Division sets up a procedure for an aggrieved person to have decisions of the tax administration under the Sample reviewed. Not all decisions of the tax administration may be reviewed under this procedure but the Division does cover most all decisions having a direct effect on the tax liability of a person. With respect to the decisions covered by the Division, this procedure replaces standard avenues of judicial review, see section 325(5).

Again, such a restriction may not be possible in certain countries and the approach must be adjusted to suit local considerations. Decisions of the tax administration that are not subject to review under this procedure may be reviewed in the usual manner for judicial review of administrative action.

377. The Division is structured under three subdivisions. The first deals with an internal review by the tax administration. This will often be the most efficient manner in which to resolve disputes between the tax administration and persons subject to the income tax law. It has the potential to be relatively quick and simple and not involve the expense of court or tribunal proceedings. Subdivision B applies where the internal review by the tax administration does not resolve the dispute. In this case the matter may initially be appealed to a specialised income tax tribunal. It is common practice to set up such a tribunal, which may be presided over by tax experts who are not necessarily lawyers and where the formalities and other restrictions of a court may be relaxed in the interests of producing efficient resolutions to income tax matters. Appeal from the tribunal to the mainstream courts is provided in the usual manner. Subdivision C provides an example of some provisions setting up an income tax tribunal (the "Income Tax Tribunal").

Subdivision A: Objections

378. Section 325 is the central provision for this Division. It sets out the decisions under the Sample that may be the subject of administrative review under the Division. The heads of reviewable decision are relatively self-explanatory and should be adjusted to suit local considerations. Access to and the timing of review depends on the "making" of a reviewable decision. The timing of such a decision is determined under section 325(2). There are some circumstances in which a person might be effectively denied review by the tax administration failing to make a decision. Therefore, section 325(3) and (4) set out certain circumstances in which a person may treat a failure by the tax administration to make a decision as a decision.

379. Section 326 incorporates the internal review procedure, i.e. an objection procedure. In order to set the procedure in motion, a person aggrieved by a reviewable decision must file with the tax administration an objection setting out the grounds on which the person objects to the decision. Importantly, the filing of an objection does not of itself effect a stay or otherwise limit the enforceability of a reviewable decision. This means that, in principle, the tax administration can proceed to collect tax in a tax assessment that is objected to. Many countries take a percentage of tax in dispute approach under which only a part of any tax in dispute must be paid. However, such an approach is potentially open to abusive delay in the payment of tax and may put recovery at risk, e.g. where the person in question is in the process of becoming insolvent. Therefore, the Sample requires full payment of tax but subject to discretion in the tax administration to stay in whole or in part the operation of a reviewable decision. The person may also seek such a stay from the Income Tax Tribunal. The objection process gives the tax administration an opportunity to reconsider the decision in question and amend the decision in any respect or disallow the objection.

Subdivision B: Appeal

380. Section 330 allows a person aggrieved by an objection decision to appeal to the Income Tax Tribunal. Similar to the effect of an objection mentioned above at paragraph 379, the filing of a notice of appeal does not stay an objection decision but the person may apply to the tax administration or the Income Tax Tribunal for such a stay. In hearing an appeal, the Income Tax Tribunal must determine the facts and make a decision. In making a decision, the Tribunal can exercise any power available to the tax administration under the Sample, i.e. this is a review on the merits.

381. Section 331 provides an example of a further appeal from a decision of the Income Tax Tribunal to a regular court. This procedure must be adjusted to local considerations, including court rules. The provision contains a power to stay the decision appealed against, which is in a similar form to the one mentioned in the last paragraph. The court may review a decision of the Tribunal only on questions of law, e.g. the court will typically not adjust findings of fact.

Subdivision C: Income Tax Tribunal

382. As mentioned above at paragraph 377, this Subdivision provides an example of some relatively simple provisions for setting up an income tax tribunal to review decisions of the tax administration. The provisions in this Subdivision are relatively self-explanatory and the following discussion just highlights some particular features. Section 337 seeks to provide substantial flexibility as to the procedures of the Income Tax Tribunal, e.g. it is not bound by rules of evidence. The same is true of hearings of the Tribunal under section 338, e.g. an accountant is permitted to represent parties before the Tribunal. The Tribunal is required to record its proceedings and publicise them, subject to non-disclosure of confidential information, see section 339.

PART VII: INTERPRETATION AND CITATION

383. This Part incorporates the general definitions section and provides for citation of the Sample. Often the general definitions section is positioned at the front of an income tax law. The Sample adopts the more direct approach of beginning with the central charging provision. Further, as explained above at paragraph 11, most of the central definitions in the Sample are incorporated into the part of the Sample to which they are most relevant. In this regard, the main purpose of section 345 is to act as a cross-referencing tool. To assist in its usability as an essential guide for navigation through the Sample, the general definitions section is placed at the end of the Sample. Many of the important definitions in section 345 have been discussed in the course of this Commentary and so further discussion of particular definitions is not pursued at this point.

PART VIII: TRANSITIONAL

384. The final Part of the Sample provides an example of some basic transitional rules. These rules assume that the law to be implemented will replace an existing income tax law. Often it will not be sufficient to simply repeal the existing law and consideration should be given to the operation of particular provisions, such as the application of the interest and penalty, offence, recovery, and administrative review regimes. Further, some of the provisions in the new law may be radically different from those in the existing law and require particular transitional rules. One example is where a country does not presently have a comprehensive transactional basis income tax, e.g. a capital gains tax. In this case, the intention is typically to tax only gains accruing after implementation of the new law. Market value outgoings are often ascribed to existing assets and market value incomings to existing liabilities in this type of case. This requires persons to value all assets and liabilities subject to the transactional basis income tax at or around the time the new law is to take effect. Another area that may require specific attention is the phasing out of concessions. The types of transitional rules required will be highly subjective to local considerations and any existing income tax law.

Word Index

bhavanathdahal@gmail.com